

# Section B-Chapter 1

## **Fundamentals of Federal Disability Law**

Julie F. Mead\*

### **Introduction**

Today's principals must have a working knowledge of a number of topics. Without question, a firm grasp of federal disability law should number among those competencies. Knowledge of federal disability law bears strong connections to the principal's focus on providing instructional leadership for a diverse teaching staff and an even more diverse student body, while at the same time championing equity in all workings of the school.<sup>1</sup> The precepts of Section 504 of the Rehabilitation Act of 1973,<sup>2</sup> the Individuals with Disabilities Education Act,<sup>3</sup> and the Americans with Disabilities Act<sup>4</sup> affect classroom instruction, student discipline, hiring and supervision of staff, and relationships with parents. All three acts are premised on the notion that in order for individuals with disabilities to enjoy equal educational or employment opportunities, sometimes difference of treatment must be applied. For example, equity requires that some deaf children be furnished with a sign language interpreter in order to access the learning of the classroom. Likewise, equity may necessitate that a worker who uses a wheelchair for mobility be allowed to rearrange his office space in order to allow for better accessibility to the files and equipment necessary to do his job. Understanding the boundaries formed by these three federal disability statutes empowers the principal both by specifying what is required and by elucidating the degrees of freedom available for creative use of building and district resources. This chapter is designed to explore the major tenets of these important laws and to serve as an introduction to the more detailed chapters that follow.

### **Section 504 of the Rehabilitation Act of 1973**

Of the three laws under focus here, Section 504 of the Rehabilitation Act of 1973 (Section 504) is the oldest and, in some ways, the simplest. As a civil rights statute, its purpose is straightforward: it bars discrimination on the basis of disability by any recipient of federal funds.<sup>5</sup> As such, it applies to all public schools in the United States and any private schools that also receive federal monies. Accordingly, schools and school districts must ensure that all the programs offered are accessible to persons with disabilities. As an anti-

discrimination statute, its coverage extends from birth to death. Therefore, it has implications for students, employees, parents, and members of the general public who wish to access the benefits created by a school.

Principals are probably most familiar with Section 504's application to students. Those students who have a "physical or mental impairment which substantially limits one or more of such person's major life activities"<sup>6</sup> must receive an education comparable to that of their nondisabled peers.<sup>7</sup> Major life activities include, among others, walking, talking, hearing, seeing, breathing, and learning.<sup>8</sup> The disability may be permanent (e.g., a visual impairment, cerebral palsy, or attention deficit disorder) or temporary.<sup>9</sup> In the case of temporary disabilities, the issue is whether the disability substantially affects the person for a sufficient period of time. As the Office for Civil Rights (OCR) explained: "[t]he issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual."<sup>10</sup> It should be noted, however, that Congress amended the definition of "disability" in 2008, clarifying that "transitory" disabilities with an actual or expected duration of less than six months are excluded from the definition of a person with a disability.<sup>11</sup> In addition, care must be taken so that personnel do not discriminate against a person based on a perceived disability where one does not exist,<sup>12</sup> because Section 504 also prohibits discrimination against a person who "has a history" of a disability<sup>13</sup> or "is regarded as having" a disability.<sup>14</sup> Even though persons in these categories do not have a disability that impairs function, the law's protections recognize that discrimination is no less abhorrent simply because the person or persons discriminating jumped to an erroneous conclusion. Whether or not the disability actually exists, Section 504 protects individuals from discriminatory treatment based on the status characteristic of disability.

Once a child with a disability is identified, Section 504 requires that he or she receives meaningful access to the educational program provided by a school. Providing an education comparable to that of nondisabled peers means that school personnel may be required to make reasonable accommodations in order that the student's disability does not serve as a barrier to how the child can access information or demonstrate learning.<sup>15</sup> Reasonable accommodations may be physical (e.g., Braille, preferential seating, a note-taker, assistance with carrying supplies) or instructional (e.g., a sign language interpreter, extended time on a test, vocabulary assistance) and may include special education and related services.<sup>16</sup> Accommodations are determined by staff members in consultation with the parents<sup>17</sup> and are outlined on an accommodation plan. Although technically the regulations do not require it,<sup>18</sup> most schools prudently use written accommodation plans.<sup>19</sup>

Ensuring nondiscriminatory access to children with disabilities also requires attention to issues of harassment and bullying.<sup>20</sup> As such, schools

must investigate any complaint of disability harassment in a timely fashion and then take appropriate action. As OCR explained in 2014 guidance:

If a school's investigation reveals that bullying based on disability created a hostile environment—i.e., the conduct was sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school—the school must take prompt and effective steps reasonably calculated to end the bullying, eliminate the hostile environment, prevent it from recurring, and, as appropriate, remedy its effects. Therefore, OCR would find a disability-based harassment violation under Section 504 and Title II [of the ADA] when: (1) a student is bullied based on a disability; (2) the bullying is sufficiently serious to create a hostile environment; (3) school officials know or should know about the bullying; and (4) the school does not respond appropriately.<sup>21</sup>

Section 504 also has implications for hiring and working with staff. Again, the Act protects those individuals who have mental or physical impairments that substantially limit them, or have a history of such impairments, or are regarded as having such.<sup>22</sup> Just as students must be reasonably accommodated in order to access educational opportunities, employees' disabilities must be reasonably accommodated in order to access employment opportunities.<sup>23</sup> Reasonableness has its bounds, however, and employers are not required to substantially alter the qualifications or essential requirements of a job in order to accommodate a worker's disability.<sup>24</sup> In addition, the employer is not expected to bear undue administrative or financial burdens when considering accommodations.<sup>25</sup>

Parents with disabilities also enjoy protection under Section 504. Schools must ensure that parents with disabilities, through reasonable accommodations when necessary, have access to parent-teacher conferences and any meetings concerning the child's progress and behavior in school.<sup>26</sup> For example, a teacher planning to meet with a parent who utilizes a wheelchair for mobility would have to be sure the meeting place was accessible to the parent.

Chapter 2 of this section provides a detailed discussion of Section 504 and the obligations it places on schools.

## **Americans with Disabilities Act**

Using its Constitutional power to regulate interstate commerce,<sup>27</sup> Congress enacted the Americans with Disabilities Act (ADA) in 1990.<sup>28</sup> The ADA extends the nondiscrimination protections of Section 504 beyond recipients of federal financial support to private employers and commercial establishments.<sup>29</sup> The law is divided into five titles, as follows:

- Title I — prohibits employment discrimination.<sup>30</sup>

- Title II – applies to all subdivisions of state and local government, regardless of whether they receive federal financial assistance.<sup>31</sup> Students in public schools are protected under this title.<sup>32</sup>
- Title III – prohibits discrimination by businesses that serve the public (e.g., stores, restaurants, hotels and motels, etc.).<sup>33</sup> Title III's provisions also apply to non-sectarian private schools, although private schools are not held to the same programmatic accessibility standards as are public schools. Private schools need only accommodate those children with disabilities that can be served with minor adjustments to the academic program.<sup>34</sup>
- Title IV – applies to telecommunications services such as telephone and television companies.<sup>35</sup>
- Title V – contains several miscellaneous but important provisions, including a statement that the ADA should not be read to require lesser standards than those of Section 504;<sup>36</sup> that a state's immunity from suit under the Eleventh Amendment is abrogated by the ADA;<sup>37</sup> that ADA's provisions apply to Congress and all agencies of the legislative branch;<sup>38</sup> that the term "individual with a disability" does not include active drug users<sup>39</sup> or transvestites;<sup>40</sup> and that homosexuality and bisexuality are not "impairments" under the ADA, and that various other "conditions" are not included under the term "disability."<sup>41</sup>

Congress amended the ADA in 2008<sup>42</sup> in order to correct what legislators considered inappropriate interpretations of the act by the U.S. Supreme Court.<sup>43</sup> The revisions clarify the definition of "major life activities"<sup>44</sup> and direct that "[a]n impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability."<sup>45</sup> Moreover, the consideration of whether a disability substantially limits a person "shall be made without regard to the ameliorative effects of mitigating measures."<sup>46</sup> Finally, the revisions direct that reviewing courts should construe the definition of a disability "in favor of broad coverage of individuals under this Act."<sup>47</sup>

Even with these clarifications, Title II of the ADA largely mirrors the requirements of Section 504 with respect to the protections for students in the public school classroom and, accordingly, the requirements of both acts are often jointly referred to as "Section 504/ADA."<sup>48</sup> For public schools, then, additional ADA requirements often relate to construction and renovation requirements associated with physical accessibility.

## **Individuals with Disabilities Education Act**

The Individuals with Disabilities Education Act (IDEA) is without doubt the most prescriptive of the three acts with regard to the educational experience of children with disabilities. First enacted in 1975 under the title, the Education for All Handicapped Children's Act (EAHCA),<sup>49</sup> Congress renamed



the statute the Individuals with Disabilities Education Act (IDEA) in 1990, at the same time it enacted the ADA. Unlike Section 504 and the ADA, the IDEA is a funding statute, rather than a civil rights statute.<sup>50</sup> It provides funds to assist states to meet the needs of students whose disabilities “adversely affect a child’s educational performance”<sup>51</sup> such that special education and related services are needed.<sup>52</sup> This piece of child welfare legislation serves as a complement to Section 504. You might say that Section 504 is the “stick” (punishing those who violate it by termination of federal funds), while the IDEA is the “carrot” (providing financial incentives for the appropriate delivery of special education<sup>53</sup> and related services<sup>54</sup>).

Therefore, a student with disabilities who is protected against discrimination under Section 504/ADA may not meet the more narrow definitions of disability to be able to qualify for services under the IDEA. To be eligible under IDEA, the student’s profile of needs and abilities must match the definition of one or more disability categories specified by the IDEA.<sup>55</sup> These disability categories are “mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . , orthopedic impairments, autism, traumatic brain injury, other health impairments, and specific learning disabilities.”<sup>56</sup> Thus, those served under the IDEA are a subset of those protected under Section 504/ADA. For example, a child with a life-threatening food allergy would be protected from discrimination under Section 504 and the ADA, but may not qualify as a “child with a disability” under the IDEA. In addition, a child could have an impairment (e.g., a visual impairment or health-related issue) that is not severe enough to “adversely affect[] . . . educational performance” as required by the regulations to qualify for services under the IDEA.<sup>57</sup> However, that child may still be entitled to accommodations under Section 504/ADA in order to receive an education comparable to students who are not disabled.

The IDEA is an extremely detailed law that requires school districts to document and justify the services provided to eligible children with disabilities. The IDEA creates a federal statutory right, or an entitlement, for each student with a disability. That entitlement is known as the right to a free appropriate public education (FAPE), which consists of special education and related services designed to address the unique needs of the individual child.<sup>58</sup> The law creates an affirmative obligation on the part of the state and its local school districts to identify and serve all eligible students with disabilities within their geographic boundaries.<sup>59</sup> This obligation to identify, locate, and serve children with disabilities also extends to those children whose parents have chosen to enroll them in private schools.<sup>60</sup> Students may be referred for evaluation by any school personnel or by parents. Once referred, the school district must review the child’s records and design a series of assessments in order to determine whether the suspicions of a disability are founded.<sup>61</sup> Parents must be provided notice of their rights under the law, and must consent in writing to an evaluation before any testing may commence.<sup>62</sup> Once the evaluation is complete, the school personnel meet with the parents as an “IEP team” to

determine eligibility together.<sup>63</sup> As mentioned before, the mere presence of a disability does not qualify a child for services under the IDEA.<sup>64</sup> Rather, eligibility is dependent on whether the disability adversely affects educational performance such that special education is needed, the degree to which may be further specified in the state's plan of service.<sup>65</sup> Chapter 3 of this section describes the particulars of the IDEA evaluation and eligibility process.

Once eligibility is determined, the IEP team, which includes the parents, collaborates to produce an individualized education program (IEP).<sup>66</sup> The IEP is a document that delineates measurable annual goals for the child and specifies the kind and nature of services to be provided to or on behalf of the child.<sup>67</sup> As such, the IEP is the document by which FAPE is defined for an individual child—an individualized equity plan, if you will. Note that FAPE does not have a unitary definition under the law;<sup>68</sup> that is, what constitutes FAPE for one child may not provide FAPE for another. A child's unique needs dictate the goals, objectives, and services defined by the IEP. This fact reveals a foundational characteristic of the IDEA. All decisions must be based on individualized determinations of need, as opposed to considerations of group instruction or programmatic design. You might say the “I” looms large in the IDEA.

In 1982, the Supreme Court provided further explanation of FAPE and what it requires, with particular focus on the meaning of the word “appropriate.” The Court explained that FAPE does not require that a child's potential be maximized, but rather that the IEP be “reasonably calculated to enable the child to receive educational benefits.”<sup>69</sup> FAPE is a “basic floor of opportunity,”<sup>70</sup> a minimum level of service below which a district may not go.<sup>71</sup> Recently, the Supreme Court clarified the standard for FAPE, declaring that “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.”<sup>72</sup>

Once the IEP team determines the child's IEP goals and objectives, the team must determine the issue of placement.<sup>73</sup> The IDEA requires that children with disabilities be educated in the least restrictive environment (LRE), another central principle of the IDEA. LRE requires that children be educated with their nondisabled peers to the “maximum extent appropriate.”<sup>74</sup> The LRE principle was codified in the original EAHCA, and amendments made to the IDEA in 1997 and 2004 strengthened this principle by creating a strong presumption in favor of educating children with disabilities in traditional classroom settings.<sup>75</sup> The IEP team must first consider how the child's needs can be met in the regular class environment. This consideration must include a discussion of the curricular adaptations and supports, supplemental aids, and services that may make it possible to deliver the child's IEP in the general classroom.<sup>76</sup> However, even given that strong presumption of regular class placement with support, the LRE for some students may require placement in other than the regular classroom for part or all of the school day.<sup>77</sup> It is incumbent upon school personnel to show why, given the “nature and severity

of the [child's] disability,"<sup>78</sup> and even with the addition of supplementary aids and services, as well as curricular adaptations and supportive services, FAPE cannot be achieved in the regular class setting for part or all of the child's school day. To that end, the law requires that school districts make available a "continuum of alternative placements" (e.g., resource rooms, special classes, special schools),<sup>79</sup> but that these other placements only be used when equity demands such a difference.

If a child's poor performance in the regular class motivates the IEP team to reexamine the appropriateness of a placement, it is helpful to note that the provisions of the IDEA essentially offer two explanations for such a problem: either the child is inadequately supported in the traditional classroom, or the child is inappropriately placed in that setting. The law requires that the IEP team carefully examine the first question before considering the second.

It is also important for all staff to comprehend that LRE is related to, but is not synonymous with, "inclusion." Inclusion is an educational philosophy defined as "providing all students within the mainstream appropriate educational programs which are challenging and yet geared to their capabilities and needs as well as any support and assistance they and/or their teachers may need to be successful in the mainstream."<sup>80</sup> Some even argue that all students with disabilities should be included at all times, regardless of the nature and severity of their disabilities. This stance, often referred to as "full inclusion," is inconsistent with the IDEA. The IDEA does not require that students with disabilities be included as much as *possible*—it requires that students with disabilities be included as much as *appropriate*.<sup>81</sup> The IDEA is predicated on the principle that sometimes appropriateness (that is, equity) requires something other than what is traditional to meet the unique needs of an individual child. However, it is certainly true that for most students with disabilities, an individualized examination of the needs of the child and the appropriate settings to address those needs will result in an "included" placement for all or part of the school day. Chapter 4 of this section addresses provisions in the law regarding IEPs, least restrictive environment, and placement. Chapter 5 discusses the requirement to provide "related services" under the IDEA. Chapter 6 details requirements for transition services, which are those services that will enable a child to transition from school to work or college.

The final core component of the IDEA is procedural protections.<sup>82</sup> In order to protect the child's entitlement and to ensure that all decision making occurs in the proper context, the IDEA mandates detailed procedural requirements and safeguards. If parents believe that the school is not providing at least an appropriate education for their child, they can challenge the district through a "due process" hearing.<sup>83</sup> This hearing is presided over by an impartial hearing officer supplied by the state. The hearing officer makes findings of fact, and then applies the law to the facts of the situation.<sup>84</sup> Parents may challenge any decision relative to the process (e.g., evaluation, eligibility, appropriateness, placement). Likewise, if the district believes that parents are obstructing the school's ability to meet its obligation of FAPE for the child by refusing to

consent to an evaluation, the district may request a due process hearing to settle the dispute.<sup>85</sup> Hearing decisions may be appealed in state or federal court.<sup>86</sup> Provisions also require school districts to make available mediation as a mechanism for resolving any dispute with parents and avoiding the more adversarial hearing process.<sup>87</sup> Chapter 8 of this section describes parental rights and the dispute resolution process in detail.

Another major addition to the law in 1997, and revised in 2004, includes the creation of provisions detailing procedural safeguards for children with disabilities facing disciplinary sanctions.<sup>88</sup> These provisions essentially codify earlier case law and require disciplinarians to ensure that children with disabilities are treated equitably by the process.<sup>89</sup> The particulars of the discipline provisions are detailed in Chapter 7.

Finally, case law has established that parents who prevail at the hearing or in court may be entitled to remedies under the court's broad authority to fashion "such relief as the court determines is appropriate."<sup>90</sup> These remedies include recovery of attorney fees;<sup>91</sup> reimbursement of costs, including tuition costs borne by the parent;<sup>92</sup> and compensatory education.<sup>93</sup>

## **Recommendations for Practice**

This chapter has provided an overview of federal disability law as it applies to public schools today. Subsequent chapters in this section will further elaborate on these themes. They include the following:

- Chapter 2: Discrimination under Section 504 of the Rehabilitation Act and Americans with Disabilities Act
- Chapter 3: Qualifying for Special Education Services under IDEA
- Chapter 4: IEPs, Least Restrictive Environment, and Placement
- Chapter 5: Related Services under the IDEA
- Chapter 6: Secondary School Transition Planning
- Chapter 7: Disciplining Students with Disabilities
- Chapter 8: Parental Rights, Procedural Safeguards, and Due Process

Considering the issues related to this topic, the savvy principal would do well to consider the following recommendations for practice:

1. Develop a full understanding of federal disability law and its application to schools.
2. Develop a firm grasp of state laws and regulations that complement these federal laws. Particular attention should be paid to provisions that heighten the standards or requirements set by federal law.
3. Fully examine local policies and procedures that have been created to fulfill the obligations created by these laws.

4. Periodically review local policies to be certain they are current and accurately reflect the federal and state laws upon which they are founded.
5. Determine who can serve as a network of support within the school, the district, and the community to help all staff understand these laws and to help keep abreast of changes in the law.
6. Provide staff development opportunities so that all staff members understand their responsibilities under the law.
7. Cultivate relationships with disability advocacy groups in the area, particularly parent groups. Doing so allows the district to establish the kind of cooperative relationships envisioned between parents and school personnel in the IDEA.
8. Find a mechanism for remaining current with the developments in this rapidly evolving area of school law. Numerous organizational and commercial newsletters, including updates through email or social media, serve this function. In addition, school districts may utilize a law firm that provides such updates on either a regular or as-needed basis. Be sure to be on the "routing list" for any such publications received by the district.

## Endnotes

\* Judith I. Risch contributed to earlier versions of this chapter.

<sup>1</sup> This chapter builds, in part, on sections of Julie Mead, *"The Legal Foundations of Equity: Protecting Access to Education."* in FOUNDATIONS OF DEMOCRATIC EDUCATION, (M.J. O'Hair, et. al., eds. 2000).

<sup>2</sup> 29 U.S.C. § 794 (2012); 34 C.F.R. § 104.1 et seq. (2016).

<sup>3</sup> 20 U.S.C. § 1400 et seq. (2012); 34 C.F.R. § 300.1 et seq. (2016).

<sup>4</sup> 42 U.S.C. § 12101 et seq. (2012).

<sup>5</sup> 29 U.S.C. § 794 (2012).

<sup>6</sup> 34 C.F.R. § 104.3(j)(1)(i) (2016).

<sup>7</sup> 34 C.F.R. § 104.3(k)(2) (2016).

<sup>8</sup> 34 C.F.R. § 104.3(j)(2)(ii) (2016).

<sup>9</sup> See, e.g., *In re Castillo v. Schriro*, 15 N.Y.S.3d 645 (N.Y. Sup. Ct. 2015); *Antone v. Nobel Learning Communities, Inc.*, No. 11-3717 2012 WL 174960 (D.N.J. Jan. 19, 2012); *Davis (CA) Joint Unified Sch. Dist.* 31 IDELR 186 (OCR 1999).

<sup>10</sup> *Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities*, U.S. DEP'T. OF EDUC., <http://www2.ed.gov/about/offices/list/ocr/504faq.html> (last visited Sept. 12, 2016).

<sup>11</sup> 42 U.S.C. § 12102(3)(B) (2012). The revisions were made as part of the 2008 Amendments Act to the ADA, which included a conforming provision that likewise revises the meaning of "disability" under Section 504. See Pub. L. No. 110-325, § 7, 122 Stat. 3553 (2008).

<sup>12</sup> 34 C.F.R. § 104.3(j)(2) (2016).

<sup>13</sup> 34 C.F.R. § 104.3(j)(1)(ii) (2016).

<sup>14</sup> 34 C.F.R. § 104.3(j)(1)(iii) (2016).

<sup>15</sup> 34 C.F.R. § 104.34(a) (2016).

<sup>16</sup> 34 C.F.R. § 104.33(b) (2016).

- <sup>17</sup> 34 C.F.R. § 104.35(c) (2016).
- <sup>18</sup> 34 C.F.R. §§104.31 – 104.39 (2016).
- <sup>19</sup> See, e.g., *A Parent and Teacher Guide to Section 504: Frequently Asked Questions*, FLA. DEP'T. OF EDUC., <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070055-504bro.pdf>.
- <sup>20</sup> Catherine Lhamon, Dear Colleague Letter, U.S. DEP'T. OF EDUC., (Oct., 21, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>.
- <sup>21</sup> *Id.* at 4.
- <sup>22</sup> 34 C.F.R. § 104.3 (2016).
- <sup>23</sup> 34 C.F.R. § 104.11(a)(1) (2016).
- <sup>24</sup> 34 C.F.R. § 104.12(a) (2016).
- <sup>25</sup> *Southeastern Cmty. Coll. v. Davis*, 442 U.S.397 (1979).
- <sup>26</sup> *Rothschild v. Grottenthaler*, 907 F.2d. 286 (2d Cir. 1990).
- <sup>27</sup> United States Constitution, Article 1, Section 8, Clause 3 ("Congress shall have Power... to regulate Commerce with foreign Nation, and among the several States...").
- <sup>28</sup> Pub. L. No. 101-336, 104 Stat. 327 (1990).
- <sup>29</sup> 42 U.S.C. § 12101 (2012).
- <sup>30</sup> 42 U.S.C. §§ 12111-12117 (2012).
- <sup>31</sup> 42 U.S.C. §§ 12131-12165 (2012).
- <sup>32</sup> *Questions and Answers on the ADA Amendments of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools*, U.S. DEP'T. OF EDUC., <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html> (last visited Sept. 20, 2016).
- <sup>33</sup> 42 U.S.C §§ 12181-12189 (2012).
- <sup>34</sup> See, e.g., U.S. Department of Justice, Civil Rights Division, *Justice Department Settles with Private Montessori School to Prevent Disability Discrimination* (Sept. 29, 2014), <https://www.justice.gov/opa/pr/justice-department-settles-private-montessori-school-prevent-disability-discrimination> (last visited Sept. 12, 2016).
- <sup>35</sup> 47 U.S.C. § 225 (2012).
- <sup>36</sup> 42 U.S.C. §§ 12201-12213 (2012).
- <sup>37</sup> 42 U.S.C. § 12202 (2012).
- <sup>38</sup> 42 U.S.C. § 12209 (2012).
- <sup>39</sup> 42 U.S.C. § 12210 (2012).
- <sup>40</sup> 42 U.S.C. § 12208 (2012).
- <sup>41</sup> 42 U.S.C. § 12211(a) and b) (2012) (conditions enumerated include, among others, pedophilia, exhibitionism, voyeurism, compulsive gambling, kleptomania, and pyromania).
- <sup>42</sup> See Pub. L. No. 110-325, 122 Stat. 3553 (2008).
- <sup>43</sup> *Id.* at § 2, citing *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002).
- <sup>44</sup> 42 U.S.C. § 12102(2)(A) (2012) ("major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.").
- <sup>45</sup> 42 U.S.C. § 12102(4)(C) (2012).
- <sup>46</sup> 42 U.S.C. § 12102(4)(E)(i) (2012). Mitigating measures include "medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies." 42 U.S.C. § 12102(4)(E)(i)(I) (2012).
- <sup>47</sup> 42 U.S.C. § 12102(4)(A) (2012).
- <sup>48</sup> See, e.g., Perry A. Zirkel, *A National Update of Case Law 1998 to the Present under the IDEA and Section 504/A.D.A.*, NAT'L. ASS'N. OF STATE DIRECTORS OF SPECIAL EDUC., <http://www.nasds.org/LinkClick.aspx?fileticket=gDUBs9sKzRw%3d&tabid=578> (last visited Sept. 20, 2016).
- <sup>49</sup> Pub. L. No. 94-142, 89 Stat. 773 (1975).
- <sup>50</sup> 20 U.S.C. § 1400(d)(1) (2012).

- <sup>51</sup> 34 C.F.R. § 300.8 (2016).
- <sup>52</sup> 20 U.S.C. § 1401(3)(A)(ii) (2012).
- <sup>53</sup> 20 U.S.C. § 1401(29) (2012), (“The term ‘special education’ means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (B) instruction in physical education.”)
- <sup>54</sup> 20 U.S.C. § 1401(26) (2012) (“The term ‘related services’ means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.”).
- <sup>55</sup> 20 U.S.C. § 1401(3) (2012); 34 C.F.R. § 300.8 (2016).
- <sup>56</sup> 20 U.S.C. § 1401(3) (2012).
- <sup>57</sup> 34 C.F.R. § 300.8 (2016).
- <sup>58</sup> 20 U.S.C. § 1401(9) (2012).
- <sup>59</sup> 20 U.S.C. § 1412(a)(3). IDEA uses the terms state education agency (SEA), 20 U.S.C. § 1401(32) (2012), and local education agency (LEA). 20 U.S.C. § 1401(19) (2012). It should be noted that some charter schools may be LEAs for the purposes of IDEA. 20 U.S.C. § 1413(e)(1)(B) (2012).
- <sup>60</sup> 20 U.S.C. § 1412 (a)(3)(A) (2012); 34 C.F.R. § 300.111 (2016). The rights afforded children enrolled by their parents in private settings are not coextensive with those of children in the public setting. These students enjoy only a group entitlement as opposed to an individual one and must be served “consistent with [their] number and location.” 20 U.S.C. § 1412 (a)(10)(A) (2012); 34 C.F.R. § 300.132 (2016). In addition, IDEA only requires LEAs to expend federal dollars on those children in private schools and makes no requirements for the expenditure of state or local funds. 20 U.S.C. § 1412 (a)(10)(A)(i)(I) (2012); 34 C.F.R. § 300.133(c) (2016). Of course, states may impose additional requirements through state statutes.
- <sup>61</sup> 20 U.S.C. § 1414 (b)(2) (2012).
- <sup>62</sup> 20 U.S.C. § 1414 (a)(1)(D) (2012).
- <sup>63</sup> IEP refers to the Individualized Education Program. 20 U.S.C. § 1401(14) (2012). Chapter 3 details the required composition of IEP teams and the processes used in determining eligibility of a child under the IDEA. Chapter 4 details the required elements of an IEP and factors related to its implementation.
- <sup>64</sup> Although mere presence of a disability does qualify a child for *protection from discrimination* and an education comparable to that of non-disabled peers under Section 504/ADA. See Discussion of Section 504, *supra*, and Chapter 2.
- <sup>65</sup> 34 C.F.R. § 300.100 (2016).
- <sup>66</sup> 20 U.S.C. § 1414(d) (2012).
- <sup>67</sup> The IEP should also specify any curricular adaptations, supports, supplementary aids, and services. 20 U.S.C. § 1414 (d)(1)(A)(i)(IV) (2012); 34 C.F.R. § 300.320(a)(3) (2016).
- <sup>68</sup> Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 202 (1982) (declining to establish a single test to determine whether FAPE has been provided).
- <sup>69</sup> *Id.* at 207. However, state law may place requirements for a higher level of service on its LEAs.
- <sup>70</sup> *Id.* at 201.
- <sup>71</sup> *Id.* at 200 (citations omitted).
- <sup>72</sup> *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988 (2017).
- <sup>73</sup> 20 U.S.C. § 1414(e) (2012); 34 C.F.R. § 300.327 (2016).
- <sup>74</sup> 20 U.S.C. § 1412(a)(5) (2012).

- <sup>75</sup> S. REP. NO. 105-17, (1997), available at 1997 WL 244967; see also Julie F. Mead, *Expressions of Congressional Intent: Examining the 1997 Amendments to the IDEA*, 127 WEST EDUC. L. REP. 511(1998).
- <sup>76</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(V) (2012); 34 C.F.R. § 320(a)(5) (2016).
- <sup>77</sup> See, e.g., *Baquerizo v. Garden Grove Unified Sch. Dist.*, 826 F.3d 1179 (9th Cir. 2016); *T.M. v. Cornwall Cent. Sch. Dist.*, 752 F.3d 145 (2nd Cir. 2014); *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576 (5th Cir. 2009).
- <sup>78</sup> 20 U.S.C. § 1412(a)(5) (2012).
- <sup>79</sup> 34 C.F.R. § 300.115 (2016).
- <sup>80</sup> WILLIAM STAINBACK, *SUPPORT NETWORKS FOR INCLUSIVE SCHOOLING: INTERDEPENDENT INTEGRATED EDUCATION*, 3 (1990).
- <sup>81</sup> 20 U.S.C. § 1412(a)(5) (2012).
- <sup>82</sup> 20 U.S.C. § 1415 *et seq.* (2012).
- <sup>83</sup> 20 U.S.C. § 1415(f) (2012).
- <sup>84</sup> 20 U.S.C. § 1415(h) (2012).
- <sup>85</sup> 20 U.S.C. § 1414(a)(1)(D)(ii)(I) (2012).
- <sup>86</sup> 20 U.S.C. § 1415(i)(2) (2012).
- <sup>87</sup> 20 U.S.C. § 1415(e) (2012).
- <sup>88</sup> 20 U.S.C. § 1415(k) (2012).
- <sup>89</sup> See also Mead, *supra* note 74, at 524 (“Essentially these provisions, like the judicial interpretations from which they stem, demonstrate that when school officials consider the discipline of students with disabilities they must ask three critical questions to ensure that the disciplinary sanction does not result in discrimination on the basis of disability and to ensure equity: (1) Is the behavior a manifestation of the disability? (2) Does the disciplinary consequence result in a change of placement thereby invoking the procedures of IDEA? and (3) Was the child receiving an appropriate programming [sic] at the time the misbehavior occurred?”).
- <sup>90</sup> 20 U.S.C. § 1415(i)(2)(C) (2012).
- <sup>91</sup> 20 U.S.C. § 1415(i)(3) (2012).
- <sup>92</sup> *School Comm. of Town of Burlington v. Dep’t of Educ. of Mass.*, 471 U.S. 359 (1985); *Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).
- <sup>93</sup> See, e.g., *B.D. v. District of Columbia*, 817 F.3d 792 (D.C. Cir. 2016); *Doe v. East Lyme Bd. of Educ.*, 790 F.3d 440 (2nd Cir. 2015); *Ferren C. v. Sch. Dist. of Phila.*, 612 F.3d 712 (3d Cir. 2010). For a general discussion of remedies under the IDEA, see DIXIE SNOW HUEFNER AND CYNTHIA M. HERR, *NAVIGATING SPECIAL EDUCATION LAW AND POLICY*, 61-274 (2012).

## Case List

- Antone v. Nobel Learning Communities, Inc.*, No. 11-3717 2012 WL 174960 (D.N.J. Jan. 19, 2012)
- B.D. v. District of Columbia*, 817 F.3d 792 (D.C. Cir. 2016)
- Baquerizo v. Garden Grove Unified Sch. Dist.*, 826 F.3d 1179 (9th Cir. 2016)
- Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 202 (1982)
- Castillo v. Schriro*, 15 N.Y.S.3d 645 (N.Y. Sup. Ct. 2015)
- Doe v. East Lyme Bd. of Educ.*, 790 F.3d 440 (2nd Cir. 2015)
- Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988 (2017)
- Ferren C. v. Sch. Dist. of Phila.*, 612 F.3d 712 (3d Cir. 2010)
- Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993)
- Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576 (5th Cir. 2009)
- Rothschild v. Grottenthaler*, 907 F.2d. 286 (2d Cir. 1990)



School Comm. of Town of Burlington v. Dep't of Educ. of Mass., 471 U.S.  
359 (1985)  
Southeastern Cmty. Coll. v. Davis, 442 U.S.397 (1979)  
Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999)  
T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145 (2nd Cir. 2014)  
Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184 (2002)

### Key Words

|                                   |                                     |
|-----------------------------------|-------------------------------------|
| accommodations                    | impairment                          |
| Americans with Disabilities Act:  | inclusion                           |
| Titles I, II, III, IV, V          | individualized education program    |
| bullying                          | (IEP)                               |
| child with a disability           | Individuals with Disabilities       |
| disability                        | Education Act                       |
| discrimination                    | least restrictive environment (LRE) |
| due process protections           | major life activity                 |
| Education for All Handicapped     | meaningful access                   |
| Children's Act                    | private schools                     |
| evaluation                        | procedural due process              |
| federal funds                     | related services                    |
| free appropriate public education | remedies                            |
| (FAPE)                            | Section 504 of the Rehabilitation   |
| harassment                        | Act of 1973                         |
| hearings                          |                                     |



## **IDEA Series**

---

**Broken Promises:  
The Underfunding of IDEA**



**National Council on Disability**  
February 7, 2018

National Council on Disability (NCD)  
1331 F Street NW, Suite 850  
Washington, DC 20004

***(IDEA Series) Broken Promises: The Underfunding of IDEA***

National Council on Disability, February 7, 2018  
Celebrating 30 years as an independent federal agency

This report is also available in alternative formats. Please visit the National Council on Disability (NCD) website ([www.ncd.gov](http://www.ncd.gov)) or contact NCD to request an alternative format using the following information:

[ncd@ncd.gov](mailto:ncd@ncd.gov) Email

202-272-2004 Voice

202-272-2022 Fax

The views contained in this report do not necessarily represent those of the Administration, as this and all NCD documents are not subject to the A-19 Executive Branch review process.



## National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

### Letter of Transmittal

February 7, 2018

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President:

On behalf of the National Council on Disability (NCD), I am pleased to submit this report titled *Broken Promises: The Underfunding of IDEA*. This report is part of a five-report series on the Individuals with Disabilities Education Act (IDEA) that examines the past-to-current funding levels for all parts of the IDEA, analyzes the impact that the lack of full-funding has had on states in meeting their obligations to provide a free and appropriate public education to students with disabilities, and provides recommendations regarding future funding.

As you know, the right of students with disabilities to receive a free and appropriate public education in the least restrictive environment is solidly rooted in the guarantee of equal protection under the law granted to all citizens under the Constitution. Over the past 42 years, the Federal Government has recognized and supported this right through providing billions of dollars in special education funding to assist the states in meeting their responsibilities in this area. NCD has repeatedly called on Congress to fully fund IDEA. The Federal Government's failure to meet its promised funding obligation has stressed many state and local budgets to the point where many districts routinely struggle to meet student needs. In 1975, Congress promised to cover 40 percent of the average cost to educate a child with disabilities. Congress later amended the law to say that the Federal Government would pay a "maximum" of 40 percent of per-pupil costs. Today, the Federal Government pays less than half of what it originally promised in 1975.

Students with disabilities are particularly vulnerable to the adverse effects of funding issues, which can include delays in evaluations or rejection of requests for independent educational evaluations, inappropriate changes in placement and/or services, and failures to properly implement individualized education programs (IEPs). This report analyzes and summarizes several of the types of funding mechanisms proposed by Congress via bills in the last several congresses, as well as funding history, state funding formulas and budget tables, and district funding.

NCD stands ready to assist the Administration in ensuring the right to a free and appropriate public education for students with disabilities as set forth in IDEA.

Respectfully,

A handwritten signature in cursive script, appearing to read "Clyde E. Terry".

Clyde E. Terry  
Chairperson

---

(The same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the U.S. House of Representatives.)

## **National Council on Disability Members and Staff**

### **Members**

Clyde E. Terry, *Chairperson*  
Benro T. Ogunyipe, *Vice Chairperson*  
Billy W. Altom  
Rabia Belt  
James T. Brett  
Bob Brown  
Daniel M. Gade  
Wendy S. Harbour  
Neil Romano

### **Staff**

*Vacant*, Executive Director  
Joan M. Durocher, General Counsel & Director of Policy  
Amy Nicholas, Attorney Advisor  
Amged Soliman, Attorney Advisor  
Ana Torres-Davis, Attorney Advisor  
Anne Sommers, Director of Legislative Affairs & Outreach  
Phoebe Ball, Legislative Affairs Specialist  
Lisa Grubb, Director of Operations and Administration  
Stacey S. Brown, Staff Assistant  
Keith Woods, Financial Management Analyst



## Acknowledgments

---

The National Council on Disability thanks Selene Almazan, Denise Marshall, and Melina Latona of the Council of Parent Attorneys and Advocates; Laura W. Kaloi of the McKeon Group; and Candace Cortiella of The Advocacy Institute for the research conducted in developing this report.





# Contents

---

|  |    |
|--|----|
| Acknowledgments .....  | 5  |
| Contents .....   | 7  |
| Executive Summary .....  | 9  |
| List of Acronyms .....   | 11 |
| Introduction .....   | 13 |
| Research Methods .....   | 14 |
| <i>Qualitative Analysis</i> .....  | 14 |
| <i>Policy Analysis and Literature Review</i> .....   | 15 |
| <i>Quantitative Data</i> .....   | 15 |
| <i>Limitations</i> .....   | 15 |
| Chapter 1: History of Funding of the Individuals with Disabilities<br>Education Act (IDEA) ..... | 17 |
| Authorizations Versus Appropriations .....   | 20 |
| <i>IDEA Part B Grants to States</i> .....  | 20 |
| <i>IDEA Part B, Section 611</i> .....  | 20 |
| <i>IDEA Part B, Section 619 Preschool Grants Program</i> .....                                   | 20 |
| <i>IDEA Part C Grants for Infants and Families</i> .....   | 23 |
| Supplement Not Supplant .....  | 24 |
| Maintenance of Effort .....  | 25 |
| <i>Federal Regulations on Maintenance of Effort</i> .....  | 26 |
| <i>Federal Reports on Maintenance of Effort</i> .....  | 27 |
| <i>Congressional Action on Maintenance of Effort</i> .....                                       | 28 |
| Chapter 2: Efforts to Obtain Full Funding .....  | 31 |
| Chapter 3: Cost of Special Education .....   | 33 |
| Chapter 4: Impact of Lack of Federal Funding .....   | 35 |
| Parent Insight .....   | 35 |
| Medicaid in Schools .....  | 37 |

|   |    |
|---|----|
| Chapter 5: Perspectives of Key Stakeholders ..... | 39 |
| Chapter 6: Findings .....                         | 41 |
| Impact: Federal Underfunding .....                | 41 |
| Impact: No Large-Scale National Study .....       | 41 |
| Chapter 7: Recommendations .....                  | 43 |
| Endnotes .....                                    | 45 |

## Executive Summary

---

In 1975, when Congress passed the first iteration of the Individuals with Disabilities Education Act (IDEA) mandating that all children with disabilities be provided a free appropriate public education in the least restrictive environment (LRE), it also promised states the Federal Government would provide 40 percent of the average per pupil expenditure to help offset the cost of educating eligible students. In the nearly 43 years since the law's passage, Congress has never lived up to that funding promise. The failure to provide adequate federal funding has left states and districts burdened to find the fiscal resources required to meet their IDEA obligations.

To better understand how the persistent underfunding of IDEA impacts students with disabilities, the National Council on Disability (NCD) undertook research for this report. Using a mixed methods study, key questions were used to examine the history of the IDEA funding, identifiable impacts in districts and schools resulting from a lack of full funding, and the effect a lack of funding has had on services to students.

In this report, NCD found that the lack of federal support places considerable pressure on state and local budgets, resulting in a range of actions including one state placing an illegal

cap on IDEA identification, districts and schools limiting hiring of personnel and providers, districts and schools restricting service hours, and districts and schools reducing or eliminating other general programs. There is unanimous support to increase annual federal IDEA funds and agreement that increases would allow districts to improve outcomes and use freed-up local funds to support all students. Finally, no large-scale national study has been conducted since the early 2000s, which limits researchers and policymakers' ability to understand the true costs of special education, and maintenance of effort (MOE) requirements can serve as a disincentive to districts piloting innovative or expanded services.

To address these findings, we recommend the following to Congress, the Department of Education, and state policymakers:

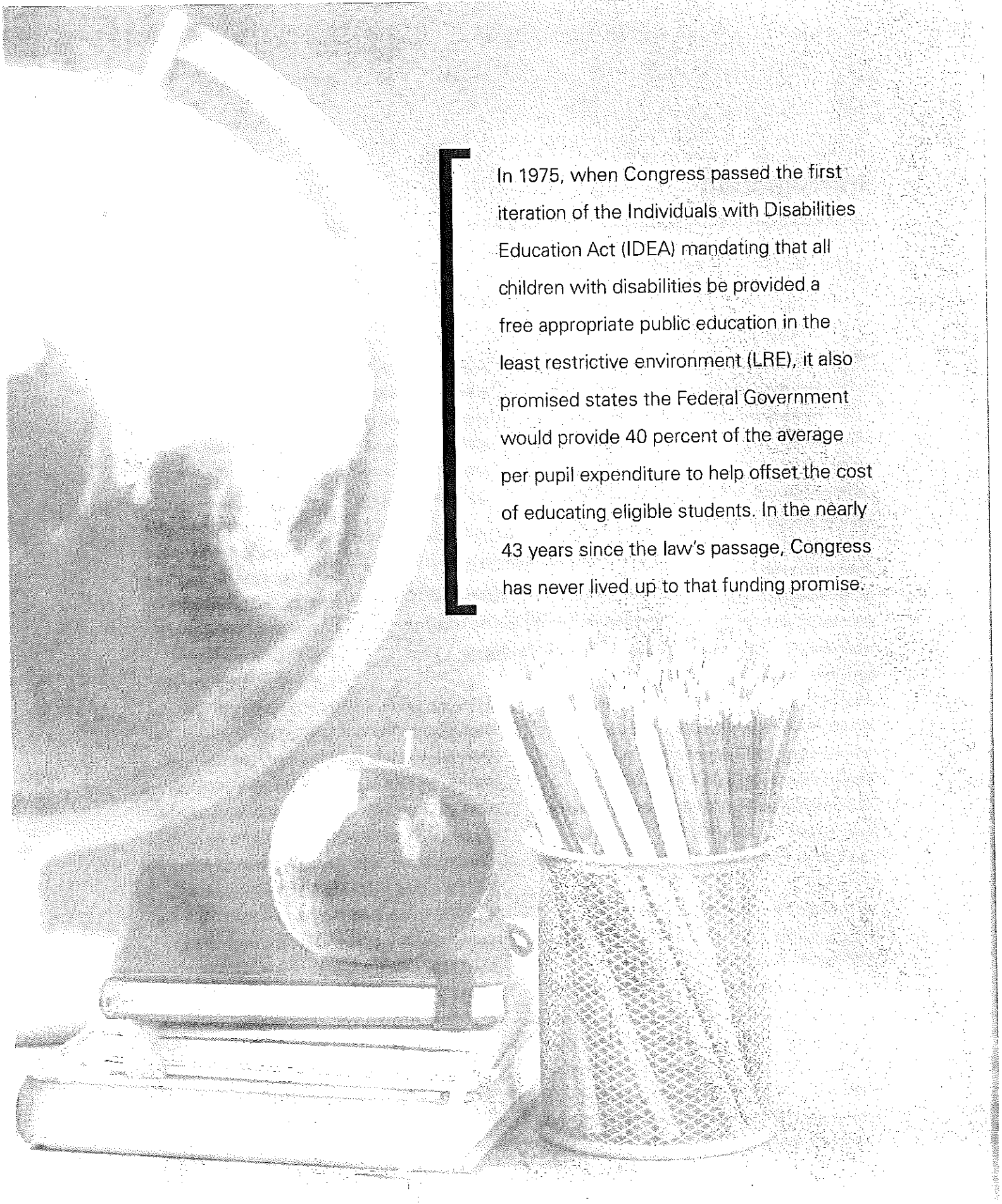
- Increase funding to the maximum authorized amount
- Provide flexibility in IDEA's MOE requirements that also protect student civil rights
- Establish a funding threshold beyond which increases will be tied to improved results for students with disabilities



## List of Acronyms

---

|       |  |
|-------|--|
| AASA  | The American Association of School Administrators      |
| APPE  | average per pupil expenditure                          |
| ARRA  | American Recovery and Reinvestment Act                 |
| BCA   | Budget Control Act                                     |
| CEC   | Council for Exceptional Children                       |
| CEIS  | Coordinated Early Intervening Services                 |
| COPAA | Council of Parent Attorneys and Advocates              |
| EAHCA | Education for All Handicapped Children Act             |
| EHA   | Education of the Handicapped Act                       |
| FAPE  | free appropriate public education                      |
| GAO   | U.S. Government Accountability Office                  |
| IDEA  | Individuals with Disabilities Education Act            |
| IEP   | individualized education program                       |
| LEA   | local educational agency                               |
| LRE   | least restrictive environment                          |
| MOE   | maintenance of effort                                  |
| NCD   | National Council on Disability                         |
| OCR   | U.S. Department of Education's Office for Civil Rights |
| SEA   | state educational agency                               |
| SEEP  | Special Education Expenditure Project                  |



In 1975, when Congress passed the first iteration of the Individuals with Disabilities Education Act (IDEA) mandating that all children with disabilities be provided a free appropriate public education in the least restrictive environment (LRE), it also promised states the Federal Government would provide 40 percent of the average per pupil expenditure to help offset the cost of educating eligible students. In the nearly 43 years since the law's passage, Congress has never lived up to that funding promise.

## Introduction

---

The National Council on Disability (NCD) has long advocated for Congress to provide federal funds for special education as authorized in the Individuals with Disabilities Education Act (IDEA). Most recently, in its statement on the 40th anniversary of IDEA, NCD pointed out that "(I)n 1975, Congress promised to cover 40 percent of the average cost to educate a child with disabilities, but decades later, broken promises and disagreements over the Federal Government's funding responsibilities remain. Congress later amended the law to say that the Federal Government would pay a 'maximum' of 40 percent of per-pupil costs. Today, the Federal Government pays less than half of what it originally promised in 1975, or roughly 18 percent of the total."<sup>1</sup>

Research for this report found that comments received in preparation for NCD's 2002 report, *Individuals with Disabilities Education Act Reauthorization: Where Do We Really Stand?*, remain valid today. In particular, one commenter stated, "Congress must fund 40 percent of special education as promised so long ago. The lack of sufficient federal IDEA funds generates resentment and discrimination

against children with disabilities in their public schools. Any new funding must be linked to state/local school districts' compliance with and enforcement of IDEA statutory requirements. Anything else will continue to fuel noncompliance."<sup>2</sup>

---

*[T]he Federal Government pays less than half of what it originally promised in 1975, or roughly 18 percent of the total.*

IDEA's substantive right to a free appropriate public education (FAPE), requiring that the individual needs of each student drive special education services and instruction, is independent

of the availability of resources. However, the individualized nature of special education and the stark reality of the limitations on state and local funding are often at odds, resulting in district-level decisions that ration and deny services and supports to meet the unique needs of students with disabilities. More than two decades ago, NCD heard from parents that, while a lack of resources is not an acceptable excuse under the equal protection provisions of the Constitution upon which IDEA is based, school districts continue to use lack of funding as an excuse to limit the level of support and services to students with disabilities.<sup>3</sup> Interviews conducted to inform this report revealed the same.

Policymakers need additional information on the federal funding of IDEA. NCD sought



## Research Questions Addressed in Report

- What obligations does the Federal Government have to fund IDEA and at what level?
- What are the past-to-current funding levels for all parts of IDEA by the Federal Government?
- What identifiable impacts has the lack of full funding had on schools' abilities to meet their obligations under IDEA?
- What is the impact that lack of funding has had on services to students?

to gather that information. In this report, we address the following questions:

- What obligations does the Federal Government have to fund IDEA and at what level?
- What are the past-to-current funding levels for all parts of IDEA by the Federal Government?
- What identifiable impacts has the lack of full funding had on schools' abilities to meet their obligations under IDEA?
- What is the impact that lack of funding has had on services to students?

## Research Methods

To address these questions, the NCD research team conducted a mixed methods study gathering stakeholder perspectives, as well as policy and quantitative information. The research questions provided a basis for analysis of the

history, trends, and current status of federal law—both authorizing and appropriations; examination of available research and descriptive data; and consideration from the experiences of stakeholders—parents, school personnel, district and state officials or their national organization(s), and officials from the Department of Education.

## Qualitative Analysis

To gather stakeholder perspectives, the NCD research team conducted interviews and held five forums—four regional and one national. Specifically, the NCD team conducted 25 semistructured interviews with key stakeholders, including Department of Education officials; state and local administrators; and representatives from disability rights organizations, professional associations, and parent organizations to determine perspectives on federal funding for IDEA.

In the second phase of research, we gathered perspectives from parents and students through four regional focus groups in California, Illinois, Texas, and Virginia. NCD recruited participants through the Council of Parent Attorneys and Advocates (COPAA)'s member network, local parent networks, and state and national partners in the forum locations. In total, 72 people participated in the regional forums. Only 30 percent of regional forum participants were COPAA members and 70 percent were non-COPAA members. Of the 72 participants in the regional forum, 38 percent were parents or students of color.

The third phase of data collection occurred during an online forum at COPAA's national conference. In total, 58 people participated in the forum. Twenty-three percent were people of color. An additional 23 people responded

through an email address.<sup>4</sup> In addition to the 72 participants at the forum, there was a total of 81 people who responded in the focus groups, the national forum, and the email responses.

In all settings, NCD used a semistructured question protocol to gain perspectives about parent and child experiences with IDEA. Data was recorded and transcribed to identify themes among the experiences (see appendix for protocols).

### ***Policy Analysis and Literature Review***

To understand the policy context, we conducted a thorough review of current policy on the issue of IDEA federal funding, examining specifically any relevant statute, regulations, or guidance on the topic.

### ***Quantitative Data***

In our quantitative review, NCD gathered descriptive statistics and reviewed data from

the IDEA Annual Reports to Congress, Annual Budget Justifications, Annual IDEA Child Counts, as well as other available national data sets. This quantitative review helps to provide an overarching picture of the topic nationally and enhances the individual perspectives gathered from the qualitative components.

### ***Limitations***

In this study, NCD recruited participants through COPAA's member network, local parent networks, and state and national partners in the forum locations. Additionally, we purposefully selected interview participants based on location and position. Therefore, the qualitative data identified in the report should not be viewed as generalizable, but rather as perspectives of individuals within those positions. The qualitative data offers individual first-person perspectives to complement the quantitative aspects of this report.



## Chapter 1: History of Funding of the Individuals with Disabilities Education Act (IDEA)

---

IDEA,<sup>5</sup> originally enacted in 1975 as the Education for All Handicapped Children Act (EAHCA), provides federal funding through state formula grants to assist states with the excess costs of educating children with disabilities. States must provide a free appropriate public education (FAPE) to all children with disabilities as a condition of receiving federal IDEA funds. Thus, IDEA is both a grants statute and a civil rights statute.

The availability of federal funds to educate children with disabilities predates EAHCA by several years.<sup>6</sup> It was the Elementary and Secondary Education Amendments Act of 1966 that first authorized a federal assistance program for states to educate children with disabilities.<sup>7</sup> That program was repealed in 1970 and federal assistance for children with disabilities was consolidated under the Education of the Handicapped Act (EHA). Funding was then incorporated into the EAHCA upon its passage in 1975.

EAHCA introduced a funding formula that would provide each state with a maximum grant equal to the state's number of children with disabilities receiving services multiplied by a percentage of the national average per pupil expenditure (APPE). The APPE percentage was authorized to gradually increase—starting at 5 percent in fiscal year 1978 (FY1978) and

increasing to 40 percent in 1982. The 40 percent APPE funding level, which was permanently authorized, has come to be known as “IDEA full funding.” The Senate Committee on Labor and Public Welfare stated the reason for the funding formula as follows:

The Committee wished to develop a formula which would target funding and eligibility for funding on the population of handicapped children for whom services would be provided. The Committee adopted this formula to provide an incentive to states to serve all handicapped children and to assure that the entitlement is based on the number of children receiving special education and related services within the State and for whom the State or the local educational agency is paying for such education. The formula in existing law, the Education of the Handicapped Act, distributes Federal funds to the States on the number of all children, aged three to twenty-one within such State. The Committee has developed a formula which generates funds on the basis of the handicapped children receiving an education within a State.<sup>8</sup>

IDEA has undergone several reauthorizations since 1975. The most significant change to the funding formula occurred in the 1997

reauthorization.<sup>9</sup> Congress became increasingly concerned that tying funding to the number of students receiving special education was acting as an incentive to overidentify students as needing special education. This concern was particularly acute regarding children of color and to the disability categories of specific learning disability, intellectual disability, and emotional disturbance.<sup>10</sup> This concern appeared to be justified because the number of children with disabilities being served had grown from 4,475,011 in 1987 to 5,775,519 in 1996—an increase of 33 percent in just 10 years.<sup>11</sup>

To address this concern, Congress designed a new state allocation formula, moving from a formula based on the number of children receiving special education in the state to a formula based on the total population of children in each state and the percentage of those children who are living in poverty. Congress believed this approach would reduce or eliminate any financial incentives to overidentify students needing special education. Congress added the poverty factor to recognize the link between poverty and disability.<sup>12</sup>

The funding formula adopted in the 1997 reauthorization was to take effect beginning the year that federal appropriations for state grants exceeded \$4.9 billion. Appropriations reached that threshold in FY2000. The formula also guaranteed states a minimum, set at the amount received in the year prior to the threshold year of FY2000. Thus, states were guaranteed to receive their FY1999 level of funds.<sup>13</sup>

Any new funds appropriated for state grants were to be allocated to a state based on the total population of children ages three to 21 in that state, broken out in the following manner:

- 85 percent based on the total population of all children ages three to 21
- 15 percent based on the state's share of children living in poverty

The 1997 reauthorization maintained the maximum authorization of 40 percent of the APPE, which remains in effect today.

Prior to the 2004 reauthorization of IDEA, funding was authorized as “such sums as

may be necessary.”<sup>14</sup> In

contrast, IDEA 2004<sup>15</sup> included specific amounts of authorized funding for several years. The amounts were designed to provide significant annual increases, culminating in

a funding level for FY2011 that was the amount estimated to provide “full funding.”

For the purpose of carrying out this part, other than Section 1419 of this title, there are authorized to be appropriated—

\$12,358,376,571 for fiscal year 2005  
 \$14,648,647,143 for fiscal year 2006  
 \$16,938,917,714 for fiscal year 2007  
 \$19,229,188,286 for fiscal year 2008  
 \$21,519,458,857 for fiscal year 2009  
 \$23,809,729,429 for fiscal year 2010  
 \$26,100,000,000 for fiscal year 2011; and  
 such sums as may be necessary for  
 fiscal year 2012 and each succeeding  
 fiscal year.<sup>16</sup>

---

*This concern appeared to be justified because the number of children with disabilities being served had grown . . . 33 percent in just 10 years.*

The 2004 IDEA also introduced a new provision that allowed school districts to use IDEA federal funds to serve children who were not eligible for special education. Called Coordinated Early Intervening Services (CEIS), this provision allows districts to use up to 15 percent of IDEA Part B federal funds to serve children in kindergarten through grade 12 (with emphasis on students in kindergarten through grade three) not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. This provision is known as "voluntary CEIS."

In the case of districts identified by the state as having significant disproportionality in the identification, placement, and/or discipline of students with disabilities based

on race or ethnicity, the district is required to use 15 percent of its IDEA Part B funds to provide comprehensive CEIS to serve children, particularly but not exclusively, in those groups that were significantly overidentified. This requirement is known as "mandatory CEIS."<sup>17</sup>

States were not required to report the data on the amount of IDEA funds used by districts

to provide CEIS to the Department of Education until the 2009–2010 school year. The data collection was instituted in conjunction with the American Recovery and Reinvestment

Act of 2009 (ARRA). Reported data shows little impact of this provision on the overall IDEA funding provided to local districts. In the 2014–2015 school year, only 457 districts were required to use IDEA funds for CEIS due to disproportionality, or just 3 percent of districts nationwide.<sup>18</sup>

*In the 2014–2015 school year, only 457 districts were required to use IDEA funds for CEIS due to disproportionality, or just 3 percent of districts nationwide.*

| Year       | Amount of IDEA Part B funds spent on voluntary CEIS (in millions) | Amount of IDEA Part B funds spent on mandatory CEIS (in millions) | Total amount of IDEA Part B funds spent on CEIS (in millions) |
|------------|---|---|---|
| 2009–2010* | \$260.1   | \$306.9   | \$567.0   |
| 2010–2011  | \$115.4   | \$163.9   | \$279.3   |
| 2011–2012  | \$109.3   | \$107.2   | \$216.5   |
| 2012–2013  | \$84.6  | \$239.6   | \$324.2   |
| 2013–2014  | \$80.5  | \$176.1   | \$256.6   |
| 2014–2015  | \$69.8  | \$198.4   | \$268.2   |

\*Funds made available by the ARRA were subject to EIS.

Source: Annual reports of Part B Maintenance of Effort Reduction and Coordinated Early Intervening Services.

Concerned with the small number of districts being found to have disproportionality, in 2016 the Department of Education promulgated new federal regulations regarding the method used by states to identify local districts as having significant disproportionality. Implementation of these new requirements could result in a substantial increase in the number of districts that will be required to spend 15 percent of their IDEA Part B funds on CEIS going forward. However, the new regulations also allow districts to use some of these funds to serve students already receiving special education services in certain cases.<sup>19</sup>

### Authorizations Versus Appropriations

At no time since Congress established the federal funding formula in the EAHCA (in 1975) has the amount of funds appropriated matched the authorized amount. While IDEA is the *authorizing* legislation—laying out the amount authorized to be appropriated—this amount only provides guidance regarding the amount of funds to carry out the authorized activities. However, it does not guarantee that such amounts will, in fact, be made available to states and local districts. Ultimately, the regular appropriations bills passed annually by Congress determine the amount *appropriated*. If Congress fails to pass annual appropriations bills, funding is provided via continuing resolutions and omnibus appropriations measures.

In the case of IDEA Part B, the appropriations process has resulted in substantial underfunding throughout the history of the legislation. Annual appropriations have also been positively influenced by ARRA in 2009 and negatively

influenced by the automatic spending cuts to government programs through sequestration and the spending caps placed on future discretionary appropriations. The Budget Control Act of 2011 brought about both sequestration and the spending caps.<sup>20</sup>

---

*At no time since Congress established the federal funding formula in the EAHCA (in 1975) has the amount of funds appropriated matched the authorized amount.*

### IDEA Part B Grants to States

IDEA Part B distributes funds to states under two sections: Section 611 provides funds for children ages three to 21 receiving special

education in public schools and Section 619 provides preschool grants for children ages three to five.

### IDEA Part B, Section 611

The following table shows the history of federal appropriations from fiscal years 1988 through 2017 for IDEA Part B, Section 611 (children ages three to 21) in both dollars and as a percentage of the APPE.

This table shows that in nearly 30 years (1988–2017), the offset of federal funding provided by Congress to states for the APPE for IDEA-eligible children ages three to 21 has only once been funded above 18 percent. In the last eight years, funding has remained flat at about 16 percent.

### IDEA Part B, Section 619 Preschool Grants Program

The following table shows the actual federal appropriations for fiscal years 1988 through 2017, the number of children ages three to five served, and the federal share of the cost per child served.

| Federal Appropriations for IDEA Part B, Section 611 (children ages 3–21) |                                |   |  |                    |
|--|--------------------------------|---|--|--------------------|
| Fiscal year  | Children served (in thousands) | Appropriation (in thousands of dollars) | Federal share per child served (dollars) | Percentage of APPE |
| 1988   | 4,236                          | 1,431,737                               | 338                                      | 9%                 |
| 1989   | 4,347                          | 1,475,449                               | 339                                      | 8%                 |
| 1990   | 4,419                          | 1,542,610                               | 349                                      | 8%                 |
| 1991   | 4,567                          | 1,854,186                               | 406                                      | 9%                 |
| 1992   | 4,727                          | 1,976,095                               | 418                                      | 8%                 |
| 1993   | 4,896                          | 2,052,728                               | 419                                      | 8%                 |
| 1994   | 5,101                          | 2,149,686                               | 421                                      | 8%                 |
| 1995   | 5,467                          | 2,322,915                               | 425                                      | 8%                 |
| 1996   | 5,629                          | 2,323,837                               | 413                                      | 7%                 |
| 1997   | 5,806                          | 3,107,522                               | 535                                      | 9%                 |
| 1998   | 5,978                          | 3,807,700                               | 636                                      | 11%                |
| 1999   | 6,133                          | 4,310,700                               | 701                                      | 11%                |
| 2000   | 6,274                          | 4,989,685                               | 793                                      | 12%                |
| 2001   | 6,381                          | 6,339,685                               | 991                                      | 14%                |
| 2002   | 6,483                          | 7,528,533                               | 1,159                                    | 15%                |
| 2003   | 6,611                          | 8,874,398                               | 1,340                                    | 17%                |
| 2004   | 6,723                          | 10,068,106                              | 1,495                                    | 18%                |
| 2005   | 6,820                          | 10,589,746                              | 1,558                                    | 18%                |
| 2006   | 6,814                          | 10,582,961                              | 1,551                                    | 18%                |
| 2007   | 6,796                          | 10,782,961                              | 1,584                                    | 17%                |
| 2008   | 6,718                          | 10,947,511                              | 1,609                                    | 17%                |
| 2009   | 6,599                          | 22,805,211 *                            | 3,453                                    | 33%                |
| 2010   | 6,614                          | 11,505,211                              | 1,736                                    | 16%                |
| 2011   | 6,552                          | 11,465,960                              | 1,745                                    | 16%                |
| 2012   | 6,543                          | 11,577,855                              | 1,766                                    | 16%                |
| 2013   | 6,574                          | 10,974,866 **                           | 1,674                                    | 15%                |
| 2014   | 6,593                          | 11,472,848                              | 1,743                                    | 16%                |
| 2015   | 6,691                          | 11,497,848                              | 1,717                                    | 16%                |
| 2016   | 6,691                          | 11,912,848                              | 1,777                                    | 16%                |
| 2017   | 6,814                          | 12,002,848                              | 1,761                                    | 16%                |

\*2009 includes funds made available under the ARRA (PL. 111–15).

\*\*2013 reflects the impact of sequestration required under the Budget Control Act of 2011.

Source: U.S. Department of Education. "Special Education Fiscal Year 2017 Budget Request." <http://www2.ed.gov/about/overview/budget/budget17/justifications/h-special.ed.pdf>. (Accessed July 31, 2017.)



This table highlights that, for nearly 30 years (1988–2017), the federal funding provided to states—to offset the cost of special education to preschool age children ages three to five—

has consistently declined. This has occurred despite the fact that the number of preschool age children served by states has nearly tripled.

| <b>Federal Appropriations for IDEA Part B, Section 619 (preschool grants for children ages three–five)</b> |                                       |  |   |
|--|---------------------------------------|--|---|
| <b>Fiscal year</b>   | <b>Children served (in thousands)</b> | <b>Appropriation (in thousands of dollars)</b> | <b>Federal share per child served (dollars)</b> |
| 1988   | 288                                   | 201,054  | 698   |
| 1989   | 322                                   | 247,000  | 767   |
| 1990   | 352                                   | 251,510  | 715   |
| 1991   | 367                                   | 292,766  | 798   |
| 1992   | 398                                   | 320,000  | 804   |
| 1993   | 441                                   | 325,773  | 739   |
| 1994   | 479                                   | 339,257  | 709   |
| 1995   | 522                                   | 360,265  | 689   |
| 1996   | 549                                   | 360,409  | 656   |
| 1997   | 562                                   | 360,409  | 642   |
| 1998   | 572                                   | 373,985  | 654   |
| 1999   | 575                                   | 373,985  | 651   |
| 2000   | 589                                   | 390,000  | 662   |
| 2001   | 599                                   | 390,000  | 652   |
| 2002   | 617                                   | 390,000  | 632   |
| 2003   | 647                                   | 387,465  | 599   |
| 2004   | 680                                   | 387,699  | 571   |
| 2005   | 702                                   | 384,597  | 548   |
| 2006   | 704                                   | 380,751  | 546   |
| 2007   | 714                                   | 380,751  | 533   |
| 2008   | 710                                   | 374,099  | 527   |
| 2009   | 709                                   | 774,099*                                       | 1,092   |
| 2010   | 732                                   | 374,099  | 511   |
| 2011   | 738                                   | 373,351  | 508   |
| 2012   | 745                                   | 372,646  | 500   |
| 2013   | 749                                   | 353,238**                                      | 472   |
| 2014   | 745                                   | 353,238  | 474   |
| 2015   | 753                                   | 353,238  | 469   |

(continued)

| <b>Federal Appropriations for IDEA Part B, Section 619 (preschool grants for children ages three–five)</b> |                                       |  |   |
|--|---------------------------------------|--|---|
| <b>Fiscal year</b>   | <b>Children served (in thousands)</b> | <b>Appropriation (in thousands of dollars)</b> | <b>Federal share per child served (dollars)</b> |
| 2016   | 753                                   | 368,238  | 489   |
| 2017   | 753                                   | 368,238  | 489   |

Note: Beginning in 1991, IDEA required that services be made available to all children with disabilities ages three to five as a condition for receiving funding for children in this age range under the Grants to States program.

\*2009 includes funds made available under the ARRA (P.L. 111–15).

\*\*2013 reflects the impact of sequestration required under the Budget Control Act of 2011.

Source: U.S. Department of Education. "Special Education Fiscal Year 2017 Budget Request." <http://www2.ed.gov/about/overview/budget/budget17/justifications/h-special.ed.pdf>. (Accessed July 31, 2017.)

### ***IDEA Part C Grants for Infants and Families***

IDEA Part C provides grants to states to assist in providing services to children with disabilities, from birth to age two, and their families. Allocations are based on the number of children in the general population ages birth

through two years in each state. IDEA 2004 authorized the appropriation of "such sums as may be necessary" for each of the fiscal years 2005 through 2010. The following table shows federal appropriations for IDEA Part C for infants and families for fiscal years 1988 through 2017.

| <b>Federal Appropriations for IDEA Part C (grants for infants and families)</b> |   |
|---|---|
| <b>Fiscal year</b>  | <b>Appropriation (in millions of dollars)</b> |
| 1988  | 67,000  |
| 1989  | 68,800  |
| 1990  | 79,500  |
| 1991  | 117,000                                       |
| 1992  | 174,900                                       |
| 1993  | 213,200                                       |
| 1994  | 253,200                                       |
| 1995  | 315,600                                       |
| 1996  | 315,800                                       |
| 1997  | 315,800                                       |
| 1998  | 350,000                                       |
| 1999  | 370,000                                       |

(continued)

| Federal Appropriations for IDEA Part C (grants for infants and families) |  |
|--|--|
| Fiscal year  | Appropriation (in millions of dollars) |
| 2000   | 375,000                                |
| 2001   | 383,600                                |
| 2002   | 417,000                                |
| 2003   | 434,200                                |
| 2004   | 444,400                                |
| 2005   | 440,800                                |
| 2006   | 436,400                                |
| 2007   | 436,400                                |
| 2008   | 435,700                                |
| 2009   | 439,400                                |
| 2010   | 439,400                                |
| 2011   | 438,500                                |
| 2012   | 442,700                                |
| 2013   | 419,700*                               |
| 2014   | 438,500                                |
| 2015   | 438,600                                |
| 2016   | 458,600                                |
| 2017   | 458,600                                |

\*2013 reflects the impact of sequestration required under the Budget Control Act of 2011.

Source: Early Childhood Technical Assistance Center. "Part C National Program Data." <http://ectacenter.org/partc/partcdata.asp> (Accessed July 31, 2017.)

This table shows that, over the course of 30 years (1988–2017), the federal funding provided to states—to offset the cost of early intervention and special education to infants and toddlers—has incrementally risen.

### Supplement Not Supplant

In general, federal funds appropriated under IDEA Part B may only be used to cover the excess

costs of providing special education and related services to students with disabilities. Federal

*[For nearly 30 years (1988–2017), the federal funding provided to states—to offset the cost of special education to preschool age children ages three to five—has consistently declined.*

funds must supplement (or increase) the level of other federal, state, and local funds expended for special education and related services and in no case supplant these funds. This requirement is known as *supplement*

*not supplant*. In 1975, it was included in EAHCA and reads as follows:

[States must] provide satisfactory assurance that Federal funds made available under this part (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case to supplant such

State and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education,

the Commissioner may waive in part the requirement of this clause if he concurs with the evidence provided by the State.<sup>21</sup>

This requirement was maintained in both EHA amendments of 1986<sup>22</sup> and 1990.<sup>23</sup>

## Maintenance of Effort

In addition, IDEA includes separate maintenance of effort provisions that apply independently at the state and local level. The term *maintenance of effort* (MOE) generally refers to a requirement placed upon many federally funded grant programs that the state educational agency (SEA) and local educational agencies (LEAs) or school districts demonstrate that the level of state and local funding remains constant from year to year.

IDEA 1997<sup>24</sup> added new language identifying four exceptional circumstances an LEA may use to justify a reduction in MOE, and more than one may be applicable in each year. An

LEA may reduce its required local MOE if the reduction in expenditures is attributable to the following:

- The voluntary departure or departure for just cause of special education personnel
- A decrease in enrollment of students with disabilities

---

*[O]ver the course of 30 years (1988–2017), the federal funding provided to states—to offset the cost of early intervention and special education to infants and toddlers—has incrementally risen.*

- An individual child with disabilities moves out, graduates, ages out, or no longer needs an exceptionally costly program
- The termination of costly long-term purchases, such as the

acquisition of equipment or construction of school facilities

- The assumption of cost by the high-cost fund that may be operated by the SEA

IDEA 2004 expanded on the circumstances that allow an LEA to adjust its MOE. This additional provision, known as the “50 percent rule,” is triggered in any fiscal year for which the federal allocation exceeds the amount received in the previous year and provides that:

- LEAs may use up to 50 percent of the increase in their IDEA grant to reduce the level of local expenditures for special education.
- LEAs exercising this option are required to use the freed-up funds for “activities authorized under the Elementary and Secondary Education Act of 1965” and for early intervention services.

- States could prohibit an LEA from using this option if the LEA did not meet "the requirements of this part."
- States prohibit the use of this MOE exception for LEAs that are "unable to establish and maintain programs of free appropriate public education" or for LEAs that do not meet targets in the state's performance plan (i.e., receive less than a "meets requirements" rating, including a finding of disproportionality).<sup>25</sup>

This new provision allowing an adjustment to MOE was intended to provide LEAs with fiscal relief from the costs of local special education programs when they received a significant increase in federal special education funding. Importantly, this new reduced level of expenditures can be maintained in subsequent years until and unless the LEA voluntarily increases its local spending on special education.

This provision became significantly more important when ARRA passed in 2009. ARRA provided an increase in IDEA Part B, Section 611 funds of \$11.3 billion. ARRA funds were considered part of the FY2009 federal appropriation and were subject to the 50 percent rule in that year.

To track MOE reductions by LEAs, the Department of Education instituted new data collection beginning with FY2009. The reported data shows that relatively few LEAs exercised the option to reduce local spending up to

50 percent of the increase in federal funds. In the 2009–2010 school year, LEAs reduced local spending by a mere \$1.5 billion, a fraction of what was allowable given the huge increase provided by ARRA. Reductions in subsequent years have been limited to LEAs in a handful of states amounting to a few million dollars. Most recently, districts reduced local spending by just \$5 million.<sup>26</sup> Still, when viewing the ongoing shortfall of federal funding for IDEA, it is important to keep in mind that any increase

provided through increased appropriations could potentially provide only half of the increase for special education at the local level should LEAs exercise this provision.

*The reported data shows that relatively few LEAs exercised the option to reduce local spending up to 50 percent of the increase in federal funds.*

### **Federal Regulations on Maintenance of Effort**

On April 28, 2015, the Department of Education issued new regulations regarding LEA MOE. The Department identified a need for LEA MOE revisions based on fiscal monitoring, audits, and questions from states and others. The regulations made no changes to the funding formula.

The regulations became effective July 1, 2015. The major changes in the revised regulations include:

- Clarification of the eligibility and compliance standard, explaining that the SEA must determine that the LEA budgeted for the education of children with disabilities at least the same amount of local, or state and local, funds as it actually spent for the education

of children with disabilities during the most recent fiscal year for which information is available, and that the LEA will maintain the same level of funding in order to receive federal funds.

- Explanation of the Subsequent Years rule, which clarified that the level of effort that an LEA must meet in the year after it fails to maintain effort is the level of effort that would have been required in the absence of that failure and not the LEA's actual reduced level of expenditures in the fiscal year in which it failed to meet the compliance standard.
- Specification of the consequences for an LEA's failure to maintain effort, clarifying that when an LEA fails to meet the MOE compliance standard, the SEA is liable in a recovery action to return to the Department of Education, using nonfederal funds, an amount equal to the amount by which the LEA failed to maintain.

SEAs are responsible for ensuring that LEAs adhere to these regulations.<sup>27</sup>

### ***Federal Reports on Maintenance of Effort***

A 2014 U.S. Department of Education Office of the Inspector General's report, *Management Information Report on IDEA Maintenance of Effort Flexibility*,<sup>28</sup> provided suggestions for the next reauthorization of IDEA designed to avoid the unintended consequences of a large, one-time increase in appropriations, such as that provided by ARRA. Suggestions include the following:

- Congress could limit SEA or LEA spending reductions under the flexibility provisions at IDEA §§ 613(a)(2)(C) and 613(j) that are attributed to a large, yet temporary federal funding increase to only the period when the flexibility is exercised.
- Alternatively, Congress could prohibit any SEA or LEA spending reduction using flexibility for those supplemental federal funds received as the result of a large, yet temporary funding increase. These limitations could be accomplished through amendments to the IDEA flexibility provisions or as part of any future legislation providing a large, yet temporary supplemental IDEA appropriation.

A report by the U.S. Government Accountability Office (GAO)<sup>29</sup> in October 2015 examined the issue of MOE and offered options that Congress might consider in the next reauthorization of the IDEA regarding MOE. The report found that

because the MOE requirement lacks flexibility, it can discourage districts from altering their baseline of special education spending, even when doing so would benefit students with disabilities or result in more efficient delivery of the same services. For example, despite other grant provisions in IDEA that promote innovation, some district officials commented that the MOE requirement can serve as a disincentive to districts' efforts to pilot innovative or expanded services requiring a temporary increase in funds because it

would commit them to higher spending going forward. In addition, some district officials noted that prioritizing special education spending to meet MOE resulted in cuts to general education spending that affected services for all students, including the many students with disabilities who spend much of their days in general education classrooms.

GAO recommended:

To help districts address key challenges in meeting MOE and mitigate unintended consequences that may affect services for students with disabilities, while preserving the safeguard for funding for students with disabilities, Congress should consider options for a more flexible MOE requirement. This could include adopting a less stringent MOE requirement to align with the MOE requirements in other education programs or adding to or modifying exceptions. For example, current exceptions could be changed to allow one-time increases in spending without changing a district's MOE baseline in order to encourage pilot innovations or to allow certain spending decreases (e.g., state caps on teacher benefits), as long as a district can demonstrate the decrease does not negatively affect services.<sup>30</sup>

### ***Congressional Action on Maintenance of Effort***

A bill introduced in the House of Representatives in 2015—H.R. 2965, Building on Local District Flexibility in IDEA Act<sup>31</sup>—sought to expand the exceptions to the MOE requirement for LEAs. Specifically, under the bill, an LEA may reduce its level of expenditures for the education of children with disabilities below the level of those expenditures for the preceding fiscal year where such reduction is attributable to (1) improved efficiencies that do not result in a reduction of special education services; or (2) the reduction

---

*"[S]ome district officials commented that the MOE requirement can serve as a disincentive to districts' efforts to pilot innovative or expanded services requiring a temporary increase in funds because it would commit them to higher spending going forward."*

of expenditures for employment-related benefits provided to special education personnel, provided that such reduction of expenditures does not result in a reduction in special education services.

Additionally, a state could waive the MOE requirement for an

LEA for one fiscal year at a time if the state determines that (1) all children with disabilities have available to them a FAPE; or (2) the LEA has not reduced the level of expenditures for the education of children with disabilities for such fiscal year disproportionately to other expenditures, and granting a waiver would be equitable due to exceptional or uncontrollable circumstances or a precipitous and unforeseen decline in the LEA's financial resources.

H.R. 2965 received full support from the American Association of School Administrators (AASA).<sup>32</sup> At the same time, a leading special

education advocacy group for professionals, the Council for Exceptional Children (CEC),<sup>33</sup> voiced more limited support for an expansion to MOE, stating, "CEC urges Congress to develop policy that includes targeted exceptions that will meet the needs of LEAs without jeopardizing services for children with disabilities, e.g.

universal personnel expenditures, technology advances, instructional services."<sup>34</sup> It is expected that these organizations will recommend and support substantial changes to the MOE requirement in the next reauthorization of IDEA.





## Chapter 2: Efforts to Obtain Full Funding

---

Coalitions comprised of education organizations have worked for years to secure increased appropriations for IDEA. In 2002, the IDEA Full Funding Coalition—a working group of nine nonprofit education associations—developed a proposal to make IDEA funding mandatory and increase federal appropriations from 17 percent to 40 percent of the APPE gradually over six years.<sup>35</sup> The IDEA Full Funding Coalition annually writes to Congressional appropriators urging increased funding for IDEA.<sup>36</sup> These efforts have been supported by the introduction of IDEA full funding bills in almost every session of Congress.<sup>37</sup> In fact, support for increases to IDEA funding is largely a bipartisan issue. Despite this support, significant increases in funding remain elusive.

Increased funding was also a key recommendation of the report by the President's Commission on Excellence in Special Education. The report, *A New Era: Revitalizing Special Education for Children and Their Families*,<sup>38</sup> issued in 2002 to influence the impending IDEA reauthorization, contained several specific recommendations, which went beyond simply

increasing federal funding. Most important among the report's recommendations were the following:

- Efforts should be undertaken to determine the true excess costs of special education and use this information to set a threshold percentage of funding.
- Funding increases beyond the threshold should be based on improved academic and post-school outcomes of students with disabilities.
- The Federal Government should assume a significant responsibility for funding of the most expensive students.
- Allow states and LEAs to pool Part C and Section 619 funds to create seamless systems of early intervention services.
- The Federal Government should conduct studies on special education spending and spending on general education and other special needs programs for students with disabilities to inform the nation about the costs and expenditures of special education and related services.

The recommendations of the President's Commission were largely ignored in the 2004 reauthorization of IDEA. They remain worthwhile to explore in the next IDEA reauthorization.

NCD's 2008 report, *The No Child Left Behind Act and the Individuals with Disabilities Education Act: A Progress Report*,<sup>39</sup> recommended increased

funding for IDEA and also expressed concern regarding the CEIS provision incorporated in

---

*The recommendations of the President's Commission were largely ignored in the 2004 reauthorization of IDEA. They remain worthwhile to explore in the next IDEA reauthorization.*

IDEA 2004, stating that "Helping students with disabilities access a higher-level curriculum requires more support services, potentially

more learning time, better-trained teachers, collaborative teaching, and new instructional approaches. The current requirement to spend 15 percent of IDEA on early intervention services on nonspecial

education students diverts funding from an already needy population."<sup>40</sup>

## Chapter 3: Cost of Special Education

---

A discussion of federal funding for special education is not complete without a serious examination of what is known about the true costs of providing special education and related services to the nation's 6.0 million school-aged students with disabilities.

The last comprehensive study of special education costs was conducted 15 years ago and published in 2004.<sup>41</sup> The 1997 reauthorization of IDEA required data collection and studies to measure and evaluate the impact of IDEA and the effectiveness of state efforts

to provide a FAPE to all children with disabilities. The resulting Special Education Expenditure Project (SEEP) was conducted by the Center for Special Education

Finance at the American Institutes for Research. SEEP produced a series of reports examining a range of issues associated with special education expenditures.

While actual expenditures reported by SEEP are unhelpful in 2017, SEEP also reported on the expenditure ratio of special education to general education. SEEP reported that, overall, the expenditure ratio was 1.9. In other words, the nation spent 90 percent more on a special education student than on a regular education

student using data collected during the 1999–2000 school year.<sup>42</sup>

SEEP also reported this expenditure ratio by disability category and found wide variance in the additional costs. Expenditures for students with specific learning disabilities were 1.6 times the expenditure for a regular education student, whereas expenditures for students with multiple disabilities were 3.1 times higher.<sup>43</sup>

This finding is particularly relevant when

taken in the context of the significant changes that have occurred within the overall population of students with disabilities over the past 15 years. In particular, there has been a dramatic decline in

the number of students in the category of special learning disabilities and explosive growth in the category of autism.

The two disability categories with the lowest expenditure ratios—specific learning disabilities (1.6) and speech/language impairments (1.7)—have both declined in the number of students served between 1999 and 2014.<sup>44</sup> Meanwhile, disability categories with significantly larger expenditure ratios have shown substantial growth.

---

*The last comprehensive study of special education costs was conducted 15 years ago and published in 2004.*

For example, the category of autism represented just 1 percent of all special education students in 1999. In 2014, autism accounted for 9 percent of all students served by IDEA. Given the autism expenditure ratio of 2.9, this shift in the makeup of the population served would result in a significant increase in the overall cost of special education in schools and districts.

Similarly, the category of other health impairments accounted for 4 percent in 1999 and increased to 14 percent in 2014. Here, too, the expenditure ratio is higher than the overall average at 2.0. Thus, while the special education school-aged population increased only 4.5 percent between 1999 and 2014,<sup>45</sup> the shift in disability categories is likely driving up the overall cost of special education because the increases are coming from categories whose students have typically cost significantly more to educate, while the declining categories had the lowest expenditure ratios.

The difficulty of studying special education expenditures and reporting what is truly the excess cost of providing special education and related services to students also shows in attempts to provide reliable data on state-level education funding. For example, the 2016 Michigan Education Finance Study, a data-focused analysis of the revenues and expenditures of school districts in the state, found that there was no way to fully and accurately account for all special education expenditures at the per-student level using current state-collected data. The report suggested creating a system to track actual

special education expenditures for districts at the district level.

Without reliable data from a large-scale national study on special education expenditures and expenditure ratios, it is impossible to:

- Draw conclusions about the amount of federal funding needed to support states and local districts in their efforts to provide FAPE for students with disabilities. In 1975, when lawmakers arrived at the authorization level of 40 percent of APPE as part of EAHCA, the speculation was that students

with disabilities would, on average, double the cost of general education students. NCD has no reliable data to substantiate whether this ratio would be accurate, let alone sufficient.

---

*[T]he category of autism represented just 1 percent of all special education students in 1999. In 2014, autism accounted for 9 percent of all students served by IDEA.*

- Understand what, if any, level of encroachment exists. NCD knows that the public investment in K–12 schools has declined dramatically in many states over the last decade. According to the Center on Budget and Policy Priorities, cuts at the state level force local school districts to scale back educational services, raise more local revenue to cover the gap, or both.<sup>46</sup> What is not known is the impact this lack of spending is having on the delivery of special education, including whether local districts are encroaching on general education budgets to maintain special education services and whether services to special education students are being reduced arbitrarily to fit the available funding.

## Chapter 4: Impact of Lack of Federal Funding

---

**B**ecause states and districts recognize their legal obligation to provide FAPE for all eligible students regardless of the level of federal funding, officials are not prone to associate a lack of federal funding with student outcomes. However, federal officials have discovered that in some states, unlawful caps have been placed on either the number of eligible students or the amount of services provided, or both. A recent example of this is the special education identification and eligibility cap imposed by the Texas Education Agency, which was exposed in 2016 through in-depth reporting by the *Houston Chronicle*.<sup>47</sup>

While much advocacy has been and continues to be spent on increasing federal funding for IDEA, the past several decades have seen few significant increases and, more important, a decline in funding as a percentage of APPE, which peaked at 18 percent in 2004. In addition, as reported by the Center on Budget and Policy Priorities, the austerity brought about by the Budget Control Act and sequestration has resulted in a loss of 8 percent of purchasing power between 2010 and 2017 in both large federal education programs, Title I and IDEA.<sup>48</sup> Meanwhile, as noted in this

report, the relative costs of serving children in special education is escalating.

### Parent Insight

Through the regional focus groups and/or the national forum, parents reported that schools and districts have openly admitted that resources are limited, and therefore the school is unable to provide a comprehensive set of services and

supports to the child. Some parents reported that after an individualized education program (IEP) meeting, the principal, teacher, or other school personnel has privately admitted or even apologized to them about their inability to provide more to the child, citing a

---

*[F]ederal officials have discovered that in some states, unlawful caps have been placed on either the number of eligible students or the amount of services provided, or both.*

lack of resources, predetermined limits, specific caps, or maximums placed on certain services by schools or districts. The following are just some of the statements made by parents:<sup>49</sup>

- "She [the child] also needed speech therapy, but even if it's necessary, the school district doesn't pay for it."
- "[The school] district has an agenda, a plan for what they will offer and it has to do with the school district's budget."

- "I was told there is no continual placement for three-year-olds and no ability to offer an area of inclusion. I was also told if I wanted my daughter to be around typical-developing peers, I would have to pay for that myself."
- [With an already identified child suspected of additional disabilities] "I was told it [the evaluation] could not be done. The school said, 'we cannot afford to pay for the evaluation(s) and we cannot afford another teacher to pull her out for resources.'"
- "There is an across-the-board watering down of related services. So many of these students are either getting their services watered down or they're not getting the related services and support they actually need."
- [For a student with autism] "The default is, 'well, I'm sorry we don't have something for higher functioning kids on the autism spectrum with behavioral problems.' They don't want to do even the minimal stuff, and there is no continuum of placement."
- "My child was getting five hours a week, but at the last IEP meeting the supervisor said they would only be able to offer four hours—because the state only pays for four hours."
- A parent of a student with autism, pragmatic disorder, articulation disorder, Tourette

syndrome, and attention deficit hyperactivity disorder said: "Right now, my child is receiving four hours of parent training and a bus. And that's it."<sup>50</sup>

The shortage of special education teachers and related service providers is often cited as a reason why districts are unable to deliver services. These shortages can be the product of personnel shortages, budget constraints,

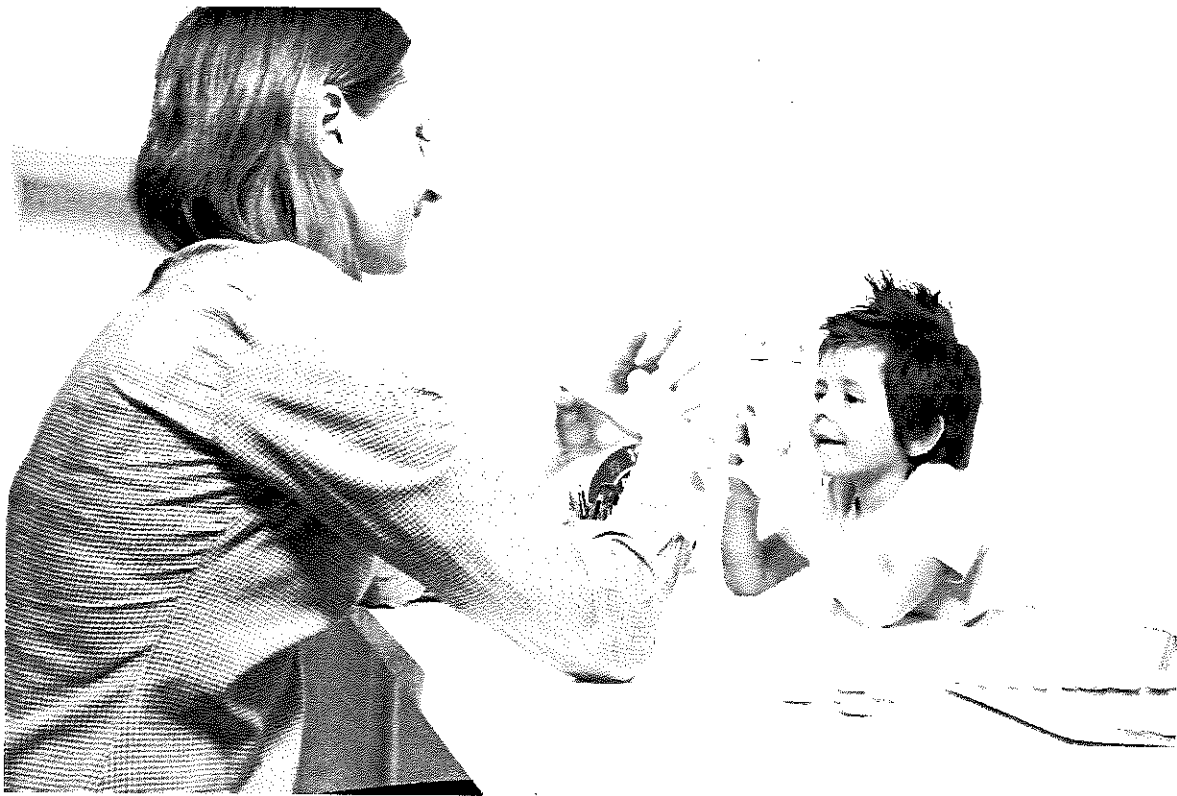
---

*"I was told there is no continual placement for three-year-olds and no ability to offer an area of inclusion. I was also told if I wanted my daughter to be around typical-developing peers, I would have to pay for that myself."*

or both. One parent reported that "the school principal apologized [when they couldn't provide a needed support] and said, 'we only have one counselor for the entire school, and we are trying to hire another

one.'"<sup>51</sup> Other parents reported that qualified staff were unavailable for in-home education. Generally, the forums reinforced that parents are discouraged about the availability of trained staff to teach children with a broad range of disabilities and needs.

A 2016 complaint filed against Trenton Public Schools<sup>52</sup> illustrated the impact of such shortages. In these cases, parents were frequently forced to resort to taking action through complaints to the U.S. Department of Education's Office for Civil Rights (OCR). In fact, the 2016 report from OCR reported the largest year-over-year increase in complaints—more than 60 percent.<sup>53</sup> In 2016, OCR received nearly 6,000 complaints alleging violations of disability laws. One-third (2,141) of those complaints alleged a violation of FAPE. According to one



OCR official interviewed for this report, a majority of the complainants are IDEA-eligible children.

### Medicaid in Schools

One growing method local districts use to cope with the lack of federal funding to support special education and related services is Medicaid.

Since 1988, Medicaid has permitted payment to schools for certain medically necessary services provided to children under IDEA through an IEP or individualized

family service plan. According to a 2017 report by the AASA,<sup>54</sup> districts rely on Medicaid to pay for nurses, therapists, and other key personnel that provide IDEA services for students with

disabilities, as well as equipment and technology. IDEA-eligible students and others benefit from Medicaid's Early and Periodic Screening, Diagnostic, and Treatment, which provides screenings and

treatments for things such as immunizations, hearing and vision problems, developmental delays, and more.

---

*[T]he 2016 report from OCR reported the largest year-over-year increase in complaints—more than 60 percent . . . nearly 6,000 complaints alleging violations of disability laws.*



The National Alliance for Medicaid in Education estimates that 1 percent of all Medicaid reimbursement goes to local school districts—between \$4 and \$5 billion annually.

Parents reported specific conversations with schools where discussions occurred during IEP meetings to determine first the level of reimbursement from health insurance, including Medicaid, which then helped decide what level of service to provide the child. In one parent's words, "any decision made by the district mainly comes down to money. So, when making their decisions, they consider

what will be covered. This typically takes priority over the individual educational needs of the child."<sup>55</sup>

While Medicaid provides revenue that districts

---

*One national association reported that its therapists spend 25 to 35 percent of their time on Medicaid paperwork—time that could be spent serving students.*

can use to help fund related services such as speech/language therapy and occupational therapy, obtaining such funds also creates additional paperwork. One national association reported that

its therapists spend 25 to 35 percent of their time on Medicaid paperwork—time that could be spent serving students. This additional burden also contributes to staff turnover.<sup>56</sup>

## Chapter 5: Perspectives of Key Stakeholders

---

Interviews were conducted with a cross section of more than 25 key stakeholders, including Department of Education officials; state and local administrators; and representatives from disability rights organizations, professional associations, and parent organizations. These interviews, combined with input taken from parents participating in the regional focus groups and national forum, revealed that there is a constant and common refrain that IDEA funding matters greatly. Highlights of these interviews include:

- Unanimous support for a substantial increase in federal funding of IDEA. Most agree that additional federal funding would allow districts to improve outcomes for students with disabilities. In addition to providing more intensive services, districts could use freed-up local funds to support all students, including those with disabilities.<sup>57</sup>
- Recommendation that additional federal funding should also include the expectation for improved outcomes for students with disabilities. More funding should not simply support the status quo and should be tied to full compliance with IDEA.<sup>58</sup>
- Reports that lack rigorous compliance with IDEA's Child Find<sup>59</sup> requirement is used to limit the numbers of students needing to be served due to costs associated with special education.<sup>60</sup>
- Agreement that the lack of federal funding contributes to the ongoing "silo" approach to educating students with and without disabilities, resulting in inappropriate segregation of students with disabilities away from their peers.<sup>61</sup>
- Agreement that the full impact and potential of IDEA is hard to determine when adequate funding has never been provided by Congress.<sup>62</sup>
- Concern for the ongoing and pervasive low expectations by adults for students and that students with disabilities are doing about as well as should be expected. This persistent mind-set continues when, in fact, special education supports and services are intended to allow students to meet the same expectations as all other students.<sup>63,64</sup>
- Agreement that parents of students with disabilities continue to need more information and support.<sup>65</sup>
- Worry and acknowledgement that there is a lack of personnel to provide specialized instruction and methodology, and that the lack of qualified personnel leads to large caseloads, which in turn contributes to the high turnover of staff. As a result, new,

inexperienced, and overloaded personnel are too often teaching students with disabilities.<sup>66</sup>

- Recognition that there is an increasing need for more behavioral supports, services, and implementation of evidence-based practices to support the growing number of students who need help.<sup>67</sup> Without more support, students encounter negative consequences, such as excessive disciplinary actions, and

aversive practices such as restraint and seclusion, as confirmed by the Civil Rights Data Collection.<sup>68</sup>

- Acknowledgment of the increasing overlap of special education and poverty that demand services delivered via a “whole child” perspective.<sup>69</sup>
- Recommendation that MOE requirements should provide more flexibility and fully support the civil rights of students.<sup>70</sup>

## Chapter 6: Findings

---

Utilizing key questions to examine the history of IDEA funding from the Federal Government to states, identifiable impacts in districts and schools resulting from a lack of full funding, and the effect a lack of funding has had on services to students, in this report NCD finds the following:

### **Impact: Federal Underfunding**

The lack of federal support to meet the original commitment Congress made to meet the excess cost of special education places considerable pressure on state and local budgets, resulting in a range of actions including:

- One state placing an illegal cap on IDEA identification of students
- Districts and schools limiting hiring of personnel and providers, which contributes to high turnover and shortages in the field
- Districts and schools restricting service hours
- Districts and schools reducing or eliminating other general programs

Current IDEA law allows states to use CEIS funds for students not eligible for special education (under certain conditions), which limits availability of IDEA funding for eligible children. Additionally, MOE provisions often undermine

innovation and can serve as disincentives to districts wishing to pilot advanced or expanded services to IDEA-eligible students.

There is unanimous support and agreement among stakeholders to encourage policymakers to:

- Increase annual federal IDEA funds with the expectation to see an increase in student achievement.
- Examine ways to create more flexibility with funding increases while protecting students' civil rights.

Such increases would allow districts and schools to improve outcomes and use freed-up local funds to support all students.

Finally, schools and districts now over-rely on federal funding such as Medicaid to help offset the costs of key personnel such as nurses, psychologists, and counselors; to provide district and schoolwide services such as screenings and therapies; and to provide assistive technology and physical equipment for children.

### **Impact: No Large-Scale National Study**

No large-scale national study on the impact of IDEA funding on districts and schools as it relates to the provision of services to students has been conducted since the early 2000s. The lack of verifiable data limits researchers'

and policymakers' ability to understand the true costs of special education. Available civil rights data does show an increasing overlap of special education and poverty, which demand services delivered via a "whole child" perspective. Moreover, stakeholders acknowledged that there is an increasing demand in schools to provide behavioral supports and evidence-based practices. Considering the school-level data showing that students with disabilities are at greater risk of disciplinary actions including suspension, expulsion, restraint, and seclusion, there is no available data connecting the provision

of IDEA services or lack of services provided to IDEA-eligible children, especially those living in poverty.

Congress' historical approach to flat funding IDEA creates apathy and acceptance in school buildings each day where—until there is more funding—families generally have to take what they are offered. School administrators, teachers, and families are yoked together because children qualify for and need individualized, specially designed instruction and support. Yet, this is generally not available because a substantially underfunded mandate hamstring everyone.

## Chapter 7: Recommendations

---

**N**CD has long recommended that Congress provide the federal funds authorized by IDEA to support the excess cost of special education. As evidenced by the findings of this report, not only has Congress failed to

provide such funds, but in fact has decreased funding in recent years.

The recommendations that follow are based on independent reports and input from stakeholders interviewed to inform this report.

### **The U.S. Congress should:**

1. Authorize funding levels that gradually increase funding to the maximum amount of 40 percent of APPE (or use a more evidence-based funding formula).
2. Tie full funding of IDEA to full enforcement and compliance with IDEA, including meeting the requirements of Results Driven Accountability, as implemented in 2014.
3. Establish a funding threshold beyond which increases will be tied to improved results for students with disabilities.
4. Scrutinize the impact and effectiveness of policies that allow the use of IDEA federal funds for services to students not eligible for special education, for example CEIS.
5. Examine ways to help states and districts support and serve high-cost students.
6. Explore ways to provide more flexibility in IDEA's MOE requirements that also protect student civil rights.
7. Add a provision that addresses adjustments to MOE and more for any large, one-time increase in federal funding (e.g., the 2008 ARRA, which provided states a substantial, one-time, annual increase in IDEA and other federal funds).

### **The U.S. Department of Education should:**

8. Commit to conducting frequent, large-scale studies regarding the true costs of special education to inform policy.
9. Strengthen ways to connect IDEA funding to state compliance requirements including using its authority to withhold funding from states with ongoing, unaddressed noncompliance issues and findings.

### **States should:**

10. Provide greater oversight and guidance to districts to help maximize federal funds flowing to schools and avoid caps, maximum level, or other efforts to limit services and supports.
11. Rigorously monitor LEA compliance with IDEA and use its authority to withhold funds until noncompliance is corrected.
12. Provide training and technical assistance to IEP teams on Child Find, FAPE, and LRE, which are research-based practices that support the academic and behavioral needs of students.
13. Advocate for an increase to IDEA funding.

## Endnotes

---

- 1 National Council on Disability, *NCD Statement on the 40th Anniversary of IDEA*. (Washington, DC: Author, 2015), accessed October 29, 2017, <http://www.ncd.gov/newsroom/2015/ncd-statement-40th-anniversary-idea>.
- 2 National Council on Disability, *Individuals with Disabilities Education Act Reauthorization: Where Do We Really Stand?* (Washington, DC: Author, 2002), accessed October 18, 2017, <http://www.ncd.gov/publications/2002/July52002>.
- 3 National Council on Disability, *Improving the Implementation of the Individuals with Disabilities Ed Act: Making Schools Work for All of America's Children*, (Washington, DC: Author, 1995), accessed October 18, 2017, <https://ncd.gov/publications/1995/09051995>.
- 4 There is no demographic information from the 23 email responses.
- 5 Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108–446, 118 Stat. 2647 (December 3, 2004).
- 6 Kyrie E. Draggio, *The Individuals with Disabilities Education Act (IDEA) Funding: A Primer* (Washington, DC: Congressional Research Service, 2016).
- 7 Pub. L. 89–750, 80 Stat. 1191 (November 3, 1966).
- 8 U.S. Congress, Senate Committee on Labor and Public Welfare, Education of the Handicapped Act as Amended Through December 31, 1975. Report No. 72–611, 94th Cong., 2d Sess. (June 2, 1975).
- 9 Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105–17, 11 Stat. 37 (June 4, 1997).
- 10 U.S. Department of Education, *Twenty-first Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, 1999, accessed October 18, 2017, <https://www2.ed.gov/about/reports/annual/osep/1999/index.html>.
- 11 Ibid.
- 12 Supra at 8.
- 13 Ibid.
- 14 Ibid.
- 15 Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108–446, 118 Stat. 2647 (December 3, 2004).
- 16 Ibid.
- 17 U.S. Department of Education, Office of Special Education Programs, *Topic Brief: Early Intervening Services*, 2006, accessed October 18, 2017, <http://idea.ed.gov/explore/view/p-old/,root,dynamic,TopicalBrief,8,.html>.
- 18 U.S. Department of Education. "IDEA Section 618 State Level Data Products: Maintenance of Effort Reduction and Coordinated Early Intervening Services, 2014–2015," August 31, 2016, accessed October 18, 2017, <https://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html#bmoeceis>.
- 19 U.S. Dept. of Education. *Fact Sheet: Equity in IDEA*, 2016, accessed October 18, 2017, <https://www.ed.gov/news/press-releases/fact-sheet-equity-idea>.
- 20 Pub. L. No. 112–25, 125 Stat. 240 (August 2, 2011).
- 21 Education for All Handicapped Children Act of 1975, Pub. L. No. 94–142, 89 Stat. 773 (November 29, 1975).
- 22 Education of the Handicapped Act Amendments of 1986, Pub. L. No. 99–457, 100 Stat. 1145 (October 8, 1986).
- 23 Education of the Handicapped Act Amendments of 1990, Pub. L. No. 101–476, 104 Stat 1103 (October 30, 1990).
- 24 Supra at 8.
- 25 Supra at 14.
- 26 U.S. Department of Education, *IDEA Section 618 State Level Data Products, Maintenance of Effort Reduction and Coordinated Early Intervening Services*, 2014–2015, August 31, 2016, accessed October 18, 2017, <https://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html#bmoeceis>.



- 27 U.S. Department of Education, Office of Special Education and Rehabilitative Services, *OSEP Memo 15-10*, 2015, accessed October 18, 2017, <https://osep.grads360.org/#communities/pdc/documents/8628>.
- 28 U.S. Department of Education, Office of Inspector General, *Management Information Report on IDEA Maintenance of Effort Flexibility*, 2014, accessed October 18, 2017, <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2014/x09n0006.pdf>.
- 29 U.S. Government Accountability Office, *Special Education: More Flexible Spending Requirement Could Mitigate Unintended Consequences While Protecting Services*, 2015, accessed October 18, 2017, <http://www.gao.gov/products/GAO-16-2>.
- 30 *Id.* at 37.
- 31 Building on Local District Flexibility in IDEA Act, H. B. 2965, 114th Congress, 2015, accessed October 18, 2017, [www.congress.gov/bill/114th-congress/house-bill/2965](http://www.congress.gov/bill/114th-congress/house-bill/2965).
- 32 American Association of School Administrators, *Support HR 2965: The BOLD (Building on Local District) Flexibility in IDEA Act*, n.d., accessed October 18, 2017, [http://www.aasa.org/uploadedFiles/Policy\\_and\\_Advocacy/files/IDEA%20MoE%201-Pager.pdf](http://www.aasa.org/uploadedFiles/Policy_and_Advocacy/files/IDEA%20MoE%201-Pager.pdf).
- 33 Council for Exceptional Children, *Issue Brief, Maintenance of Effort*, 2015, accessed October 18, 2017, <https://www.specialeducationlegislativesummit.org/wp-content/uploads/2015/07/IDEA-Maintenance-of-Effort-FINAL-2015.pdf>.
- 34 *Id.* at 1.
- 35 National Education Association, "IDEA Funding Coalition Offers Proposal," n.d., accessed October 18, 2017, <http://www.nea.org/home/18750.htm>.
- 36 AASA: The School Superintendents Association et al. *Letter to Members of the Senate and House Appropriations Committees to Increase IDEA Funding for FY2017*, March 10, 2016, accessed October 18, 2017, <https://www.nassp.org/Documents/nassp/Letters%20to%20Policymakers/IDEA%20letter%20031116%20FINAL.pdf>.
- 37 For example, IDEA Full Funding Act, H. R. 4136, 113th Congress, 2014, accessed October 18, 2017, <https://www.congress.gov/bill/113th-congress/house-bill/4136>; IDEA Full Funding Act, H.R. 551, 114th Congress, 2015, accessed October 18, 2017, <https://www.congress.gov/bill/114th-congress/house-bill/551>; IDEA Full Funding Act, H.R. 2902, 115th Congress, 2017, accessed October 18, 2017, <https://www.congress.gov/bill/115th-congress/house-bill/2902>.
- 38 President's Commission on Excellence in Special Education, *A New Era: Revitalizing Special Education for Children and Their Families*, 2002, accessed October 18, 2017, [http://ectacenter.org/~pdfs/calls/2010/earlypartc/revitalizing\\_special\\_education.pdf](http://ectacenter.org/~pdfs/calls/2010/earlypartc/revitalizing_special_education.pdf).
- 39 National Council on Disability, *The No Child Left Behind Act and the Individuals with Disabilities Education Act: A Progress Report*, 2008, accessed October 18, 2017, <https://ncd.gov/publications/2008/01282008>.
- 40 *Id.* at 19.
- 41 Thomas Parrish and Phil Esra, *The Special Education Expenditure Project (SEEP): Synthesis of Findings and Policy Implications*, in *Forum*, April 2006, accessed October 18, 2017, [http://nasdse.org/DesktopModules/DNNspot-Store/ProductFiles/217\\_d5fd28bb-dd1f-4b11-abb5-cbdd9e7e1583.pdf](http://nasdse.org/DesktopModules/DNNspot-Store/ProductFiles/217_d5fd28bb-dd1f-4b11-abb5-cbdd9e7e1583.pdf).
- 42 Jay G. Chambers, Thomas B. Parrish, and Jenifer J. Harr, *What Are We Spending on Special Education Services in the United States, 1999-2000?* (Palo Alto, CA: American Institutes for Research in the Behavioral Sciences, 2002), accessed October 18, 2017, <http://files.eric.ed.gov/fulltext/ED471888.pdf>.
- 43 Jay G. Chambers, Jamie Shkolnik, and María Pérez, *Total Expenditures for Students with Disabilities, 1999-2000: Spending Variation by Disability* (Palo Alto, CA: American Institutes for Research in the Behavioral Sciences, 2003), accessed October 18, 2017, <https://eric.ed.gov/?id=ED481398>.
- 44 Thomas Parrish and Phil Esra, *The Special Education Expenditure Project (SEEP): Synthesis of Findings and Policy Implications*, in *Forum*, April 2006, accessed October 18, 2016, [http://nasdse.org/DesktopModules/DNNspot-Store/ProductFiles/217\\_d5fd28bb-dd1f-4b11-abb5-cbdd9e7e1583.pdf](http://nasdse.org/DesktopModules/DNNspot-Store/ProductFiles/217_d5fd28bb-dd1f-4b11-abb5-cbdd9e7e1583.pdf).

- 45 U.S. Department of Education, Office of Special Education and Rehabilitative Services, *38th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (Washington, DC: Author, 2016), accessed October 18, 2017, <http://www2.ed.gov/about/reports/annual/osep/2016/parts-b-c/index.html>.
- 46 Michael Leachman, Kathleen Masterson, and Marlana Wallace, *After Nearly a Decade, School Investments Still Way Down in Some States*, 2016, accessed October 18, 2017, <http://www.cbpp.org/research/state-budget-and-tax/after-nearly-a-decade-school-investments-still-way-down-in-some-states>.
- 47 Brian M. Rosenthal, "Denied," *Houston Chronicle*, September 10, 2016, accessed October 18, 2017, <http://www.houstonchronicle.com/denied/>.
- 48 David Reich and Chloe Cho, *Unmet Needs and the Squeeze on Appropriations*, 2017, accessed October 18, 2017, [http://www.cbpp.org/research/federal-budget/unmet-needs-and-the-squeeze-on-appropriations#elementary\\_secondary](http://www.cbpp.org/research/federal-budget/unmet-needs-and-the-squeeze-on-appropriations#elementary_secondary).
- 49 Participant, 2016, Regional Focus Group or National Forum.
- 50 Palaich Augenblick and Associates, *Michigan Education Finance Study*, 2016, accessed October 18, 2017, [http://www.michigan.gov/documents/budget/Michigan\\_Education\\_Finance\\_Study\\_527806\\_7.pdf](http://www.michigan.gov/documents/budget/Michigan_Education_Finance_Study_527806_7.pdf).
- 51 Participant, 2016, Regional Focus Group or National Forum.
- 52 David Foster, "Civil Rights Complaints Filed Against Trenton Schools, DOE for Discrimination," *The Trentonian*, October 21, 2016, accessed October 18, 2017, <http://www.trentonian.com/article/TT/20161021/NEWS/161029927>.
- 53 U.S. Department of Education, Office for Civil Rights, *Securing Equal Educational Opportunity: Report to the President and Secretary of Education Under Section 203(b)(1) of the Department of Education Organization Act, FY2016* (Washington, DC: Author, 2016), accessed October 18, 2017, <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2016.pdf>.
- 54 Sasha Pudelski, *Cutting Medicaid: A Prescription to Hurt the Neediest Kids*, (Alexandria, VA: AASA, The School Superintendents Association, 2017), accessed October 18, 2017, [http://aasa.org/uploadedFiles/Policy\\_and\\_Advocacy/Resources/mecicaid.pdf](http://aasa.org/uploadedFiles/Policy_and_Advocacy/Resources/mecicaid.pdf).
- 55 Participant, 2016, Regional Focus Group or National Forum.
- 56 Telephone interview, 2016.
- 57 Telephone interview, 2016.
- 58 Telephone interview, 2016.
- 59 34 C.F.R. § 300.111: Child find. (a) General. (1) The State must have in effect policies and procedures to ensure that—(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.
- 60 Participant. Regional Focus Group or National Forum, 2016.
- 61 Telephone interview, 2016.
- 62 Telephone interview, 2016.
- 63 Telephone interview, 2016.
- 64 Participant, Regional Focus Group or National Forum 2016.
- 65 Telephone interview, 2016.
- 66 Telephone interview, 2016.
- 67 Telephone interview, 2016.
- 68 U.S. Department of Education Office for Civil Rights. *Civil Rights Data Collection: Data Snapshot (School Discipline)*, 2014, accessed October 18, 2017, <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>.
- 69 Telephone interview, 2016.
- 70 Telephone interview, 2016.



**National Council on Disability**  
**1331 F Street, NW, Suite 850**  
**Washington, DC 20004**

*Dig in. Discover how states approach priority education issues.*2015  
JUNE

## State funding for students with disabilities

Maria Millard & Stephanie Aragon

About 13 percent of all public school students receive special educational services and state spending for these students is rising.<sup>1</sup> In Michigan, for example, spending rose 60 percent from 2000 to 2010.<sup>2</sup> While service costs have been increasing, the share of the costs covered by federal funding has been decreasing.<sup>3</sup> Six years ago, the Individuals with Disabilities Education Act (IDEA) covered 33 percent of the cost of educating students with disabilities. In 2014, that number dropped to 16 percent. As a result, states and districts are scrambling to pick up a greater share of the tab leading them to rethink their state's funding mechanisms.

While all states provide some funding for students with disabilities, the way funds are distributed to districts varies greatly from state to state. This 50-state review focuses on states' primary funding mechanisms for students with disabilities. It clarifies strengths and weaknesses of these mechanisms and provides other funding considerations. Tables at the end of the brief offer a 50-state comparison.

State funding for students with disabilities is becoming increasingly important as service costs rise and the federal share of the cost drops.

State Funding for Students with Disabilities 50-State Database

### KEY TAKEAWAYS

Thirty three states fund students with disabilities through their state's primary funding formula.

Twelve states fund students with disabilities through categorical funds.

Five states fund students with disabilities through reimbursements.



## Overview of state funding systems

States tend to use different terminology to define their funding systems. For example, what one state may call a block grant another will call a categorical program. For simplicity and comparability purposes, this brief uses the following terms for state funding mechanisms and subcategories:

- ♦ Formula funding: weights, dollar allocations and staff-based allocations.
- ♦ Categorical funding.
- ♦ Reimbursement funding.

Since students with disabilities require additional resources to meet their educational needs, many states have moved toward complex financing with several components or streams of revenue.<sup>4</sup> These sophisticated methods of finance are important; however, this report focuses only on states' primary funding mechanisms. It does not focus on catastrophic, extraordinary or excess cost funding nor does it address transportation funding. Education Commission of the States' State Funding Programs for High-Cost Special Education Students by Michael Griffith addresses these issues.

### Formula funding

Thirty three states and the District of Columbia provide money for students with disabilities through their primary funding formula. Adjustments for students with disabilities are multiplied by the base funding amount – an amount deemed sufficient for general education students to meet state standards. Adjustments are made in three primary ways: weights, dollar amounts and staff-based allocations. See the ECS 50-State database for more information on Students with Disabilities: Formula Funding. (For an overview of state funding formulas, see Griffith's Understanding State School Funding report.)

### Categorical funding

Twelve states provide money for students with disabilities through categorical funds, allocated outside of the state's primary funding formula. These funds may be referred to as block grants or flat grants. Distribution of these funds is like the distribution of gift cards: districts receive a designated allocation from the state that can only be spent on students with disabilities. Levels of funding for categorical programs are dependent on state appropriations. See the ECS 50-State database for more information on Students with Disabilities: Categorical Funding.

### Reimbursement funding

Five states provide money for students with disabilities through reimbursement funding, also allocated outside of the state's primary funding formula. School districts must annually report the detailed components of their spending to the state, ensuring that policymakers can account for how state money is being spent. Reimbursement rates vary across states and – in all states but Wyoming – are only a portion of actual special education costs, often straining districts' budgets. See the ECS 50-State database for more information on Students with Disabilities: Reimbursement Funding.

### Funding mechanism comparisons

While formula funding is the most popular mechanism used by states, there are reasons states choose alternative strategies. Each mechanism comes with its own benefits and challenges that policymakers should consider when designing a funding system for special education.

### Benefits:

- ♦ *Formula funding:* Provides equity, transparency and predictability to school districts.
- ♦ *Categorical funding:* More easily guarantees that earmarked state funds are being used accordingly and allows for more targeted use of funds.
- ♦ *Reimbursement funding:* Creates transparency, higher reporting standards and better tracking of state funds.<sup>5</sup>

### Challenges:

- ♦ *Formula funding:* Policymakers have less oversight as to how districts spend funds.
- ♦ *Categorical funding:* Funding is narrowly directed, limiting district and school flexibility, and tends to be a less stable and predictable funding source.
- ♦ *Reimbursement funding:* Funding is more restrictive, paperwork intensive and subject to budgetary limits.<sup>6</sup>

## Student counts for funding purposes

Adding to the complexity in state funding mechanisms is the ways in which states account for students with disabilities. States use either student counts, or a fixed percentage of students – often referred to as “census” counts.

The most common systems for special education student counts are average daily attendance (ADA), average daily membership (ADM) or enrollment of students. Six states make use of a system that does not rely on student counts but assumes that all districts have the same percentage enrollment of special education students. This system is known as a census-based system. This type of count is often used by states as a way to discourage over-identification of special education students. However, there is concern about the disconnection between the state aid received and the actual number of students with disabilities or the cost to educate them.

**Special education is the most common categorical funding program.<sup>7</sup>**

### Innovative state strategies

- ♦ *Multiple weights:* While some states provide only one weight for special education, others weight students based on disability categories (mild, moderate, severe) or by particular disability (hearing impaired, developmental delays). Texas uses an innovative system with funding levels based on where the student is educated (resource room, homebound, vocational class, etc.). This system is applauded because it is less focused on labeling students and more concerned about their particular needs.
- ♦ *Full funding:* Wyoming is the only state that reimburses districts for 100 percent of the actual cost for educating students with disabilities.
- ♦ *Research-based funding:* While many states fund students with disabilities based upon what they can afford, Maryland established its primary funding formula based on adequacy cost studies that identified a base funding level plus weights for students with disabilities that is proven sufficient to educate students to meet state standards. Other weighting categories in the formula are also informed by adequacy cost studies.

As states confront the realities of rising costs, funding adjustments are often necessary for the continual support of students with disabilities. States are permitted to change their special education funding mechanisms as long as they maintain funding at or above the previous year's funding amount, as required by IDEA.<sup>8</sup> Understanding how state dollars are allocated is critical because it allows policymakers to make more informed school finance decisions.

## Funding mechanisms by state

The following charts provide state-level information on students with disabilities funding. Charts are organized by funding mechanisms:

- ♦ Formula funded
- ♦ Categorical
- ♦ Reimbursement

While states may use a combination of mechanisms, they have been placed into categories based on their primary funding mechanism.

### Formula funded

Thirty three states and the District of Columbia fund students with disabilities through the state's primary funding formula. Students with disabilities are accounted for through weights (single or multiple), staff-based allocations or dollar allocations. For more information on each state's weight values and funding allocation, see ECS' 50-state database on Formula Funding.

| State                  | Type of Formula Funding | Method of Determining Student Count  |
|------------------------|-------------------------|--|
| Alabama                | Staff-based allocation  | Census-based   |
| Alaska                 | Single weight           | Census-based   |
| Arizona                | Multiple weights        | Prior year's 100th day ADM   |
| Connecticut*           | N/A                     | Student count on Oct. 1  |
| Delaware               | Staff-based allocation  | Student count on Sept. 30  |
| District of Columbia** | Multiple weights        | Student count on or before Oct. 15   |
| Florida                | Multiple weights        | Multiple program membership surveys  |
| Georgia                | Staff-based allocation  | A full-time equivalent formula which includes the count of segments of the school day for each student enrolled in special education                           |
| Idaho                  | Staff-based allocation  | Census-based   |
| Indiana                | Dollar allocation       | Student count on Dec. 1  |
| Iowa                   | Multiple weights        | Student count on or before Nov. 1  |
| Kansas                 | Single weight           | Actual counts of students enrolled and receiving services  |
| Kentucky               | Multiple weights        | Student count on Dec. 1  |
| Louisiana              | Single weight           | Student count on Feb. 1  |
| Maine                  | Multiple weights        | Student count on Dec. 1***   |
| Maryland               | Single weight           | The greater of the number of special education students for the prior fiscal year or the number of special education students for the second prior fiscal year |
| Mississippi            | Staff-based allocation  | Student count on Dec. 10   |
| Missouri               | Single weight           | ADA above the state threshold of 12.6 percent  |
| New Hampshire          | Dollar allocation       | ADM  |
| New Jersey             | Dollar allocation       | Census-based   |
| New Mexico             | Multiple weights        | Student count on Dec. 1  |
| New York               | Single weight           | ADA weighted by the fraction of the school day that the student is enrolled in the public school programs  |
| North Dakota           | Single weight           | ADM  |
| Ohio                   | Dollar allocation       | ADM compiled continuously throughout the school year   |

|                |                        |  |
|----------------|------------------------|--|
| Oklahoma       | Multiple weights       | The highest of weighted average daily membership for the school district of the two preceding school years   |
| Oregon         | Single weight          | Based on ADM but may not exceed 11 percent of the district's ADM without review and approval by the Department of Education                          |
| Rhode Island   | Single weight          | The number of students eligible for free and reduced-price lunch   |
| South Carolina | Multiple weights       | The cumulative 135-day ADM of each school district by program classification   |
| South Dakota   | Dollar allocation      | Based on the district's state aid fall enrollment and the December child count   |
| Tennessee      | Staff-based allocation | A weighted ADM count based on attendance months two (12.5 percent), three (17.5 percent), six (35 percent) and seven (35 percent)                    |
| Texas          | Multiple weights       | The number of full-time equivalents in that instructional arrangement and subtracted from the ADA figure   |
| Utah           | Dollar allocation      | Previous five year's average ADM data. The state also adds a growth factor equal to the change in ADM three years prior compared to two years prior. |
| Virginia       | Staff-based allocation | ADM  |
| Washington     | Single weight          | The lesser of the district's resident special education annual average enrollment or 12.7 percent  |

\* Connecticut: The state's funding formula does not specifically designate money for students with disabilities; however, districts use formula funds for such purposes.

\*\* District of Columbia: D.C. is a single school district resulting in a district distribution system that functions differently from traditional state funding systems.

\*\*\* Maine: There is a cap of 15 percent of the district's pupil count for accounting for students with disabilities with limits to how much the count can increase in a given year. For each special education student above the 15 percent maximum, the unit receives an additional weight of .38.

## Categorical

Twelve states provide funding for students with disabilities through categorical funds. For the amount of funding for each state, see ECS' 50-state database on Categorical Funding.

| State          | Method of Determining Student Count  |
|----------------|--|
| Arkansas       | Student count on Oct. 1  |
| California     | Census-based   |
| Colorado       | Student count on Dec. 1  |
| Hawaii****     | Individual student need, not enrollment  |
| Illinois       | The IDEA child count of all students in the state  |
| Massachusetts  | Census-based   |
| Minnesota      | Adjusted ADM. Beginning in Fiscal Year 2016, the state will transition to a more census-based method that accounts for overall district average daily membership served, poverty concentration, district size and the average costs of educating students with different primary disabilities. |
| Montana        | Average Number Belonging, a calculation of the number of students enrolled   |
| Nevada         | Special education program unit, or teaching positions  |
| North Carolina | The lesser of the April 1 handicapped child count or 12.5 percent of the allotted ADM  |
| Pennsylvania   | Two-year prior student count of students in each cost category   |
| West Virginia  | Student count on Dec. 1  |

\*\*\*\* Hawaii is a single school district resulting in a district distribution system that functions differently from traditional state funding systems.



## Reimbursement

Five states provide funding for students with disabilities through reimbursements. Districts are reimbursed by the state for their actual expenditures for students with disabilities. While Michigan and Vermont track student counts as part of reimbursement process, the other three states do not. For more information on each state, see ECS' 50-state database on Reimbursement Funding.

| State     | Reimbursement Rate  | Method of Determining Student Count  |
|-----------|---|--|
| Michigan  | Reimbursement: 28.6 percent   | Two pupil counts are used: students with an IEP (head count) and the special education full-time equivalent count. Each student is counted only once and represents a full person, regardless of the setting in which they are educated. |
| Nebraska  | Reimbursement has varied from 51 percent to 57 percent since 2010.  | N/A  |
| Vermont   | Reimbursement: 60 percent of the statewide average salaries for special education teaching positions and special education administrators | ADM  |
| Wisconsin | Reimbursement: 26.79 percent  | N/A  |
| Wyoming   | Reimbursement: 100 percent  | N/A  |

## RELATED ECS RESOURCES

Michael Griffith, *The Progress of Education Reform – A Look at Funding for Students with Disabilities*, Vol. 16 No.1, Education Commission of the States, March 2015.

Maria Millard, *State funding mechanisms for English Language Learners*, January 2015.

Michael Griffith, *State Funding Programs for High-Cost Special Education Students*, May 2008.

Michael Griffith, *State Education Funding Formulas and Grade Weighting*, May 2005.

---

## ENDNOTES

- 1 National Center for Education Statistics, *Children and Youth with Disabilities* (Washington, D.C.: IES, January 2014), [https://nces.ed.gov/programs/coe/indicator\\_cgg.asp](https://nces.ed.gov/programs/coe/indicator_cgg.asp) (accessed April 2015).
- 2 Citizens Research Council of Michigan, *Financing Special Education: Analyses and Challenges* (Lansing, Mich.: Citizens Council of Michigan, March 2012), 13, <http://crcmich.org/PUBLICAT/2010s/2012/rpt378.pdf> (accessed April 2015).
- 3 New America Foundation, *Individuals with Disabilities Education Act – Funding Distribution* (Washington, D.C.: New America Foundation, Federal Education Budget Project, April 25, 2014), <http://febp.newamerica.net/background-analysis/individuals-disabilities-education-act-funding-distribution> (accessed April 2014).
- 4 Michael Griffith, *The Progress of Education Reform – A Look at Funding for Students with Disabilities* (Denver: Education Commission of the States, March 2015, Vol. 16 No.1, ), 5, <http://www.ecs.org/clearinghouse/01/17/72/11772.pdf> (accessed March, 2015).
- 5 Joanna Smith, et al., *Categorical Funds: The Intersection of School Finance and Governance* (Washington, D.C.: Center for American Progress, November 2013), 11, <http://cdn.americanprogress.org/wp-content/uploads/2013/11/CategoricalSpending1-brief-4.pdf> (accessed January 2015).
- 6 Ibid Smith, 1.
- 7 Ibid, 8.
- 8 Federal Law: 34 CFR §300.202(a)(3).

---

## Author

Maria Millard is a policy analyst with Education Commission of the States. She spent some of her childhood living in a rainforest in rural Zimbabwe. Her mother likes to say she learned to speak Shona from the bandits. Contact Maria at [mmillard@ecs.org](mailto:mmillard@ecs.org) or (303) 299.3620.

Stephanie Aragon is a researcher with Education Commission of the States. She lived in New York City for less than a year before she realized that the busyness of the city could not compete with the natural wonders of Colorado. She now lives five minutes away from the home she was raised in. Contact Stephanie at [saragon@ecs.org](mailto:saragon@ecs.org) or (303) 299.3614.

©2015 by the Education Commission of the States (ECS). All rights reserved. ECS encourages its readers to share our information with others. To request permission to reprint or excerpt some of our material, please contact ECS at (303) 299.3609 or e-mail [askinner@ecs.org](mailto:askinner@ecs.org).

FOLLOW US





August 2016

# SCHOOL CHOICE

Private School Choice  
Programs Are  
Growing and Can  
Complicate Providing  
Certain Federally  
Funded Services to  
Eligible Students

# GAO Highlights

Highlights of GAO-16-712, a report to congressional requesters

August 2016

## SCHOOL CHOICE

### Private School Choice Programs Are Growing and Can Complicate Providing Certain Federally Funded Services to Eligible Students

#### Why GAO Did This Study

Voucher and ESA programs fund students' private school education expenses, such as tuition. In school year 2014-15, 22 such school choice programs were operating nationwide, all but one of which was state funded. Under two federal grant programs, one for students with disabilities and one for students from disadvantaged areas, districts are required to spend a proportionate amount of their federal funds to provide equitable services for eligible private school students, and this population includes eligible students in private school choice programs. GAO was asked to review these topics.

This report examines 1) participation in private school choice programs and the characteristics of students, 2) program requirements for participating private schools, and 3) how Education supports districts' efforts to deliver these federally funded services in the context of school choice programs. GAO reviewed relevant federal laws and regulations, surveyed all voucher and ESA programs as of fall 2015, and interviewed Education officials and other stakeholders. GAO also reviewed documents and interviewed state, public school district, and private school officials in a nongeneralizable sample of 10 private school choice programs in four states, selected to include programs with large enrollment and a range of eligibility criteria.

#### What GAO Recommends

GAO recommends Education include in its guidance information about providing equitable services in the context of private school choice programs. Education agreed with our recommendation.

View GAO-16-712. For more information, contact Jacqueline M. Nowicki at (617) 788-0580 or [nowickij@gao.gov](mailto:nowickij@gao.gov).

#### What GAO Found

Participation in voucher and education savings account (ESA) programs, which fund private school tuition and other educational expenses, has more than doubled in the past 5 years, and available information about the characteristics of participating students varies. From school years 2010-11 through 2014-15, the number of students participating in these private school choice programs—which are regarded as an alternative to public schools—grew from approximately 70,000 to 147,000. During that time period, funds provided for students also increased substantially, from approximately \$400 million to \$859 million, according to GAO's survey of all voucher programs and ESA programs operating in 2015 and related follow-up. This growth reflects both creation of new programs and expansion of existing ones. GAO's survey also found that student eligibility is often based on their disability status or family income. However, the information programs have about student characteristics varies and cannot be compared across all programs because of differing data collection methods or definitions for characteristics like race and ethnicity, disability status, and income.

Voucher and ESA programs generally placed some requirements on participating private schools, according to GAO's review of program documents, survey responses, and interviews with program officials. For example, in GAO's survey, 18 of 20 voucher programs and one of two operating ESAs reported that teachers must meet minimum education requirements, such as having a bachelor's degree. Similarly, 17 voucher programs and one ESA reported requiring schools to measure student performance, for example, with the same tests required for public school students. Fewer private school choice programs reported that they restrict the admissions criteria schools may use for private school choice students. Private school officials GAO interviewed identified students' disciplinary or academic history as common admissions considerations.

Federal laws and regulations for two key federal education grant programs require public school districts to provide "equitable services," which may include speech therapy or reading tutors, to eligible private school students, and the Department of Education (Education) provides general guidance on these requirements. However, Education's guidance does not specifically address providing these services to students participating in private school choice programs. Education officials said they had not received any recent inquiries on the subject, but officials in all four states GAO visited—comprising half of all private choice programs and two-thirds of participating students—said that vouchers and ESAs complicate their efforts to implement these requirements. Further, although Education officials said that a student's participation in private school choice programs does not affect the federal equitable services requirements, officials GAO spoke to in two states expressed confusion about whether a student's participation in these programs changed their eligibility for these services. Providing quality information to clarify requirements and responsibilities—including adapting to emerging trends—is a key federal internal control. Providing such information would help clarify how to implement equitable services requirements in the context of growing private school choice programs.

---

# Contents

---

|              |  |    |
|--------------|--|----|
| Letter       |  | 1  |
|              | Background   | 4  |
|              | Private School Choice Programs Are Growing, and Eligibility Criteria Often Include Disability Status or Income; Data Variations Complicate Comparison of Student Characteristics across Programs | 11 |
|              | Private School Choice Programs Placed Some Requirements on Participating Private Schools   | 23 |
|              | Providing Federally Funded Equitable Services Can Be Complicated by Private School Choice Programs, and Education Has Not Provided Related Guidance  | 28 |
|              | Conclusions  | 38 |
|              | Recommendation for Executive Action  | 38 |
|              | Agency Comments and Our Evaluation   | 38 |
| Appendix I   | Objectives, Scope, and Methodology   | 40 |
| Appendix II  | Private School Choice Programs' Use of Disability Status and Family Income to Determine Student Eligibility, as of School Year 2014-15   | 43 |
| Appendix III | Private Schools Participating in Voucher Programs  | 45 |
| Appendix IV  | Comments from the Department of Education  | 46 |
| Appendix V   | GAO Contact and Staff Acknowledgments:   | 49 |
| Tables       |  |    |
|              | Table 1: Students Receiving Vouchers and Education Savings Accounts (ESA), by Program, for School Year 2014-15   | 6  |
|              | Table 2: Use of Family Income and Disability Status as Eligibility Criteria for Private School Choice Programs, as of 2015   | 14 |

---

---

|  |    |
|--|----|
| Table 3: Average Voucher Amounts and Total Funds Distributed in School Year 2014-15  | 16 |
| Table 4: Student and Institutional Characteristics That Affect Students' Annual Voucher Amounts for School Year 2014-15  | 17 |
| Table 5: Selected Districts Varied in Reported Number of Private Students Who Received IDEA and Title I-A Equitable Services and Amount of Federal Funds Set Aside for Equitable Services, School Year 2014-15 | 29 |
| Table 6: Reported Proportion of Parentally Placed Private School Students with Disabilities Who Received IDEA Equitable Services in Selected Districts, School Year 2014-15                                    | 32 |
| Table 7: Reported Proportion of Private School Students Residing in Selected Participating Public School Attendance Areas Who Received Title I-A Services, School Year 2014-15                                 | 33 |
| Table 8: School Voucher Programs' Use of Disability Status and Family Income to Determine Student Eligibility, as of School Year 2014-15   | 43 |
| Table 9: Education Savings Account (ESA) Programs' Use of Disability Status and Family Income to Determine Student Eligibility, as of School Year 2014-15  | 44 |
| Table 10: Number of Private Schools That Enrolled One or More Voucher Students and Average Number of Voucher Students per Private School during School Year (SY) 2014-15, by Voucher Program                   | 45 |

---

## Figures

|   |    |
|---|----|
| Figure 1: Voucher Programs and Education Savings Account (ESA) Programs Operating in School Year 2014-15, by State                                | 5  |
| Figure 2: Growth in Voucher and Education Savings Account (ESA) Private School Choice Programs Operating from 1990 to 2015                        | 12 |
| Figure 3: How Arizona's Education Savings Account (ESA) Program and Indiana's Voucher Program Have Expanded Eligibility to New Groups of Students | 13 |
| Figure 4: Student Gender Breakdown for School Year 2014-15 among Voucher Programs That Reported Data  | 19 |
| Figure 5: Racial and Ethnic Makeup of Voucher Students for School Year 2014-15 in the Four Programs That  |    |

---

|           |  |    |
|-----------|--|----|
|           | Reported Hispanic or Latino Ethnicity Separately from Race   | 21 |
| Figure 6: | Racial and Ethnic Makeup of Voucher Students for School Year 2014-15 in the Eight Programs That Reported Hispanic or Latino as a Racial Category | 22 |
| Figure 7: | Key Steps in IDEA and Title I-A Requirements for Providing Equitable Services to Private School Students   | 30 |

---

#### Abbreviations

|           |  |
|-----------|--|
| Education | U.S. Department of Education                               |
| ESEA      | Elementary and Secondary Education Act of 1965, as amended |
| ESA       | Education Savings Account                                  |
| ESSA      | Every Student Succeeds Act                                 |
| FAPE      | free appropriate public education                          |
| IDEA      | Individuals with Disabilities Education Act                |
| IEP       | Individualized Education Program                           |
| ONPE      | Office of Non-Public Education                             |

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



August 11, 2016

The Honorable Marcia Fudge  
Ranking Member  
Subcommittee on Early Childhood, Elementary and Secondary Education  
Committee on Education and the Workforce  
House of Representatives

The Honorable Gwen S. Moore  
House of Representatives

The Honorable Mark Pocan  
House of Representatives

Voucher and Education Savings Account (ESA) programs are forms of private school choice programs that fund elementary and secondary students' educational expenses in private schools and other non-public settings. In school year 2014-15, there were 20 voucher and two ESA programs operating in the United States.<sup>1</sup> Except for the federally funded District of Columbia voucher program, all of these programs are administered and funded by states.<sup>2</sup> While these programs serve a relatively small number of students nationwide, the benefits and challenges of private school choice are widely debated and some members of Congress have proposed additional federally funded programs.<sup>3</sup> Despite these debates and proposals, there is limited information on the similarities and differences in program requirements

---

<sup>1</sup>Other private school choice programs, such as tax credit scholarships and individual tax credits or deductions, are outside the scope of this review.

<sup>2</sup>The D.C. Opportunity Scholarship Program was most recently authorized by the Scholarships for Opportunity and Results (SOAR) Act. Pub. L. No. 112-10, div. C, 125 Stat. 38, 199 (2011). See GAO- K-12 *EDUCATION: Internal Controls for Program Management and Oversight Can Help Ensure the Success of School Choice Programs*, GAO-16-212T (Washington D.C.: November 2015).

<sup>3</sup>An example of the views of those who advocate for private school choice can be found in: Friedman Foundation for Educational Choice, *The ABCs of School Choice*, 2015 ed. (Indianapolis, IN: 2015). An example of the views for those who generally oppose private school choice programs can be found in: National School Boards Association, *Issue Brief: Private School Vouchers* (Alexandria, VA: 2015).



---

nationwide or on the characteristics of participating students and schools across states.

Some private school students, including private school choice students, also receive federally funded services through public school districts. Under two federal grant programs that provide funds to serve students with disabilities and students from disadvantaged areas, districts are required to use a portion of their federal funds to serve eligible private school students—referred to in this report as providing equitable services.<sup>4</sup> State voucher and ESA programs may affect how public school districts work with private schools to provide equitable services to private school students, particularly as the number and scope of these programs grow. You asked us to review private school choice programs and these federally funded services for private school students.

This report examines: 1) the characteristics of private school choice programs and the students who participate in them; 2) the requirements private school choice programs have for participating private schools; and 3) how selected public school districts work with private schools to provide equitable services in the context of private school choice programs and the extent to which the U.S. Department of Education (Education) provides related guidance.

To obtain information for all three objectives, we reviewed relevant federal laws, regulations, and guidance. We also surveyed all 20 voucher programs operating in fall 2015 and all five ESA programs authorized as of fall 2015 to obtain information about program design and requirements. We obtained a 100-percent response rate.<sup>5</sup> For the 20 voucher programs, our web-based survey also included questions about student and school characteristics. Further, from November 2015 to March 2016, we

---

<sup>4</sup>These programs are Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (ESEA) and Part B of the Individuals with Disabilities Education Act (IDEA). Other federal programs also have equitable services provisions, including certain other ESEA programs. We did not include those programs because they are significantly smaller in scope.

<sup>5</sup>The five authorized ESAs included two programs that were operating during 2015 and three programs that were authorized but were not operating during some or all of that year, either due to ongoing legal challenges or because they had not yet been implemented.

---

reviewed documents and conducted interviews with state, public school district, and private school officials in a non-generalizable sample of 10 private school choice programs in four states (Arizona, Indiana, Ohio, and Wisconsin). We selected programs that collectively served the majority of voucher and ESA students in school year 2014-15 and varied in terms of eligibility criteria and years in operation. In total, these states represented half of all private school choice programs and about two-thirds of all participating students. We interviewed officials at 12 private schools by selecting 3 private schools in each of the four states. Together, these 12 private schools represented a diversity of characteristics in terms of size, grade levels, religious or secular affiliation, and whether the school was specifically designed to serve students with disabilities. Within each of the four states we visited, we also interviewed officials at two public school districts to discuss federally funded services to private school students under our two selected grant programs. We also interviewed officials from Education and private school choice researchers, advocates, and opponents, which we selected to obtain a range of perspectives on private school choice initiatives. We also reviewed guidance and policy documents on federally funded equitable services.<sup>6</sup> For more information about our scope and methodology, see Appendix I.

We conducted this performance audit from June 2015 to August 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

---

<sup>6</sup>This report refers to the participation of private school students in IDEA, Part B and ESEA Title I-A programs as "equitable services." Equitable services, as that term is used in this report, means the provision of educational and related services under an applicable program by a public school district to eligible private school students. The term includes the consultation process between private school officials and public school district officials to determine, among other things, the public school districts' processes for determining the appropriate amount of federal funds available for services for private school participants, which eligible children to serve, and the services to provide.

---

## Background

Voucher and ESA private school choice programs provide eligible students with funding toward a private education.<sup>7</sup> Vouchers generally provide interested parents with funding for tuition at a religious or secular private school. ESAs are typically designed to fund a broader set of educational expenses, such as private school tuition and fees, online learning programs, private tutoring, education therapies, or higher education expenses. The first voucher program began in 1990, and the first ESA program began more recently in 2011.

The design of private school choice programs may vary in many ways, such as:

- the eligibility criteria for students to participate in the program;
- the funding sources and amounts, including the overall funding level for the program and funding amounts for individual voucher or ESA students; and
- the requirements that apply to private schools or other educational entities these students may attend, such as requirements for teachers.

In addition, ESA programs also lay out which expenses are allowed and what to do with any unused funds. For example, both ESAs operating in school year 2014-15 allowed funds to be used for college savings plans or for a student to enroll in college courses, according to program officials and our review of ESA documents.<sup>8</sup>

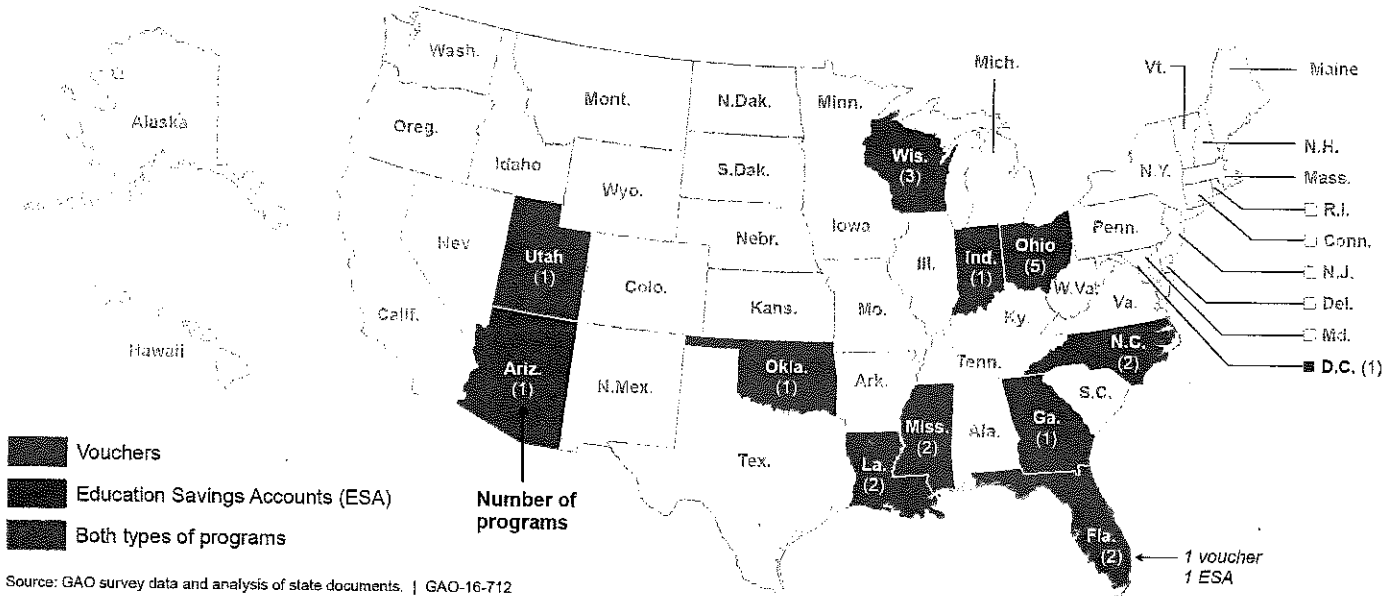
According to our survey, 20 voucher programs operated in 11 states and two ESAs operated in two states during school year 2014-15 (see fig. 1).

---

<sup>7</sup>Some of these programs have been subject to legal challenges, including on state constitutional grounds. These legal challenges were beyond the scope of our review.

<sup>8</sup>The three ESAs authorized but not operating for all or part of 2015 also allowed students to use funds for college courses, according to program officials and our review of ESA documents. All five programs allow participants to roll over some unused funds from one year to the next.

**Figure 1: Voucher Programs and Education Savings Account (ESA) Programs Operating in School Year 2014-15, by State**



Source: GAO survey data and analysis of state documents. | GAO-16-712

Note: Two voucher programs (in Arkansas and Colorado) and three ESA programs (in Mississippi, Nevada, and Tennessee) were authorized but not operating for all or part of 2015. Ohio considers EdChoice and EdChoice Expansion to be one program. EdChoice is focused on students in low-performing schools. EdChoice Expansion is focused on low-income students. We are considering them to be two programs because they have different eligibility criteria and Ohio provided us with separate survey responses because the data could not be aggregated.

The size of voucher and ESA programs varies widely. Voucher programs served between 1 and 30,378 students during school year 2014-15 (see table 1). Further, the four largest programs, operating in Florida, Indiana, Ohio, and Wisconsin, served approximately 73 percent of all voucher students nationwide. In each state, the total number of students enrolled in private school choice programs in school year 2014-15 was equivalent to less than 4 percent of the students enrolled in public schools the previous year.<sup>9</sup>

<sup>9</sup>Data on public school enrollment during school year 2013-14 is the most recently available from the National Center for Education Statistics. National Center for Education Statistics, *Selected Statistics from the Public Elementary and Secondary Education Universe: School Year 2013-14*, NCES 2015-151 (Washington, D.C.: July 2015).

**Table 1: Students Receiving Vouchers and Education Savings Accounts (ESA), by Program, for School Year 2014-15**

| State        | Program  | Number of students in program | Percent of total choice students nationwide |
|--------------|--|-------------------------------|---|
| AZ           | Empowerment Scholarship Account Program (ESA)                            | 1,311                         | 0.9   |
| DC           | Opportunity Scholarship Program  | 1,879                         | 1.3   |
| FL           | Gardiner Scholarship Program (ESA)                                       | 1,655                         | 1.1   |
|              | McKay Scholarship Program for Students with Disabilities                 | 30,378                        | 21.0  |
| GA           | Special Needs Scholarship Program  | 4,408                         | 3.0   |
| IN           | Choice Scholarship Program   | 29,148                        | 20.0  |
| LA           | Louisiana Scholarship Program  | 7,362                         | 5.0   |
|              | School Choice Program for Certain Students with Exceptionalities         | 311                           | 0.2   |
| MS           | Dyslexia Therapy Scholarship Program                                     | 119                           | <0.1  |
|              | Nate Rogers Scholarship for Students with Disabilities Program           | 1                             | <0.1  |
| NC           | Opportunity Scholarship Program  | 1,216                         | 0.8   |
|              | Disabilities Grant Program   | 685                           | 0.5   |
| OH           | Autism Scholarship Program   | 3,221                         | 2.2   |
|              | Cleveland Scholarship Program  | 7,391                         | 5.0   |
|              | Educational Choice (EdChoice) Scholarship Program <sup>a</sup>           | 19,826                        | 13.5  |
|              | Educational Choice (EdChoice) Scholarship Program Expansion <sup>a</sup> | 3,625                         | 2.5   |
|              | Jon Peterson Special Needs Scholarship Program                           | 3,470                         | 2.4   |
| OK           | Lindsey Nicole Henry Scholarship Program for Children with Disabilities  | 373                           | 0.3   |
| UT           | Carson Smith Special Needs Scholarship Program                           | 757                           | 0.5   |
| WI           | Milwaukee Parental Choice Program  | 26,868                        | 18.0  |
|              | Racine Parental Choice Program   | 1,733                         | 1.2   |
|              | Wisconsin Parental Choice Program  | 1,008                         | 0.7   |
| <b>Total</b> |  | <b>146,745</b>                |   |

Source: GAO surveys of voucher and ESA programs | GAO-16-712

<sup>a</sup>Ohio considers EdChoice and EdChoice Expansion to be one program. EdChoice is focused on students in low-performing schools. EdChoice Expansion is focused on low-income students. We are considering them to be two programs because they have different eligibility criteria and Ohio provided us with separate survey responses because the data could not be aggregated.

---

## Equitable Services for Students with Disabilities

The Individuals with Disabilities Education Act (IDEA) requires public school districts to provide for the participation of parentally placed private school children with disabilities in programs assisted or carried out under IDEA Part B.<sup>10</sup> Specifically, school districts are required to provide special education and related services—such as speech language therapy or assistive technology—to the extent consistent with the number and location of children with disabilities enrolled by their parents in private schools located in the school district. “Parentally placed” children with disabilities would include those students with disabilities enrolled by their parents in private schools through private school choice programs.

IDEA requires that school districts conduct “child find” activities to identify, locate, and evaluate children with disabilities who need special education and related services and who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district.<sup>11</sup> The district must provide special education or related services for those parentally placed students the district has elected to serve, in light of the services the district has determined (through

---

<sup>10</sup>20 U.S.C. § 1412(a)(10)(A); 34 C.F.R. §§ 300.130-300.144. According to Education officials, some students are identified as having disabilities under Section 504 of the Rehabilitation Act of 1973 but are not IDEA-eligible, and there are no Section 504 requirements for public school districts to provide equitable services to these Section 504 students in connection with their parental placement at a private school.

<sup>11</sup>The school district in which the private school is located is responsible for conducting child find activities regardless of where the child lives. The child find process must be designed to ensure the equitable participation and an accurate count of eligible children. The school district is also required to conduct timely and meaningful consultation with representatives of private schools and representatives of parents of parentally placed private school children with disabilities on the child find process; the determination of the proportionate share of funds; the consultation process itself; and the provision of special education and related services, including how, where, and by whom services will be provided, among other things. However, the district is responsible for making the final decisions about the services to be provided to eligible parentally placed private school children with disabilities.

---

consultation with private schools and parents) to make available to this population.<sup>12</sup>

Districts are required to spend a proportionate amount of their federal IDEA Part B funds (referred to as "proportionate share") to provide special education and related services to parentally placed private school students with disabilities.<sup>13</sup> The formula for determining the proportionate share is based on the number of eligible parentally placed children with disabilities attending private schools located in the district, in relation to the total number of eligible public and private school children with disabilities in the district's jurisdiction. For example, if 10 percent of all the students with disabilities attending public or private schools within a given public school district's boundaries are parentally placed private students, then 10 percent of the district's IDEA funds should be used to serve eligible private school students.

According to Education guidance, a district's obligations to parentally placed private school students with disabilities are not the same as those for students enrolled in public schools or to students with disabilities placed in a private school by a public agency.<sup>14</sup> Under IDEA, no parentally placed private school student with a disability has an individual right to receive some or all of the special education and related services

---

<sup>12</sup>Each parentally placed child with a disability who has been designated to receive services must have a services plan that describes the specific special education and related services that the district will provide to the child in light of the services that the district has determined it will make available to parentally placed children with disabilities. Services may be provided directly by the district or through a contract with another entity. The district must always control IDEA funds used to provide these services and hold titles to all materials, equipment, and property purchased with federal funds. Thus, the district may not pay funds for equitable services directly to private schools. In addition, services provided to parentally placed private school children with disabilities must be secular, neutral, and nonideological.

<sup>13</sup>The cost of carrying out child find activities, including individual evaluations, may not be included in this amount.

<sup>14</sup>In addition to parentally placed students, children with disabilities may also be placed in or referred to a private school or facility by a public agency as a means of providing special education and related services under IDEA. When a school district places a student with disabilities in a private school the financial obligations for this placement are the responsibility of the school district, and the student is entitled to all services necessary to provide a free appropriate public education, regardless of the nature or severity of the student's disability.

---

that the child would be entitled to receive if enrolled in a public school. In contrast, public school students and students placed in private schools by a public agency are entitled to all services necessary to ensure a “free appropriate public education” (FAPE).<sup>15</sup>

---

### Equitable Services for Students from Disadvantaged Areas

Federal law requires districts to use a portion of their Title I-A federal funds to provide benefits and services, on an equitable basis, to eligible private school students.<sup>16</sup> In general, Title I-A funds are used to provide services to improve the achievement of students who are failing or most at risk of failing to meet challenging academic achievement standards and who reside in public school attendance areas with high concentrations of students from low-income families.

Under Title I-A, participating school districts must, after timely and meaningful consultation with private school officials, provide eligible private school students, their teachers, and their families with Title I services that are equitable in comparison to those services provided to eligible public school students, their teachers, and their families.<sup>17, 18</sup> In

---

<sup>15</sup>A “free appropriate public education” means special education and related services that (1) have been provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the state educational agency; (3) include an appropriate preschool, elementary school, or secondary school education in the state involved; and (4) are provided in conformity with an individualized education program required under IDEA. 20 U.S.C. § 1401(9).

<sup>16</sup>20 U.S.C. § 6320; 34 C.F.R. §§ 200.62-200.67. Unless otherwise specified, in this report we describe the provisions of Title I-A of the ESEA as amended by the No Child Left Behind Act of 2001, which was in effect during the period of our review. In December 2015, Congress reauthorized the ESEA, and the new law, known as the Every Student Succeeds Act (ESSA), made various changes to the Title I-A equitable services requirements, such as modifying the process for calculating Title I-A funding amounts and establishing an ombudsman responsible for monitoring and enforcement, while retaining key requirements related to identifying and serving eligible private school students. Pub. L. No. 114-95, § 1011, 129 Stat. 1802, 1871-74 (2015). Changes made by ESSA to the Title I-A equitable services requirements are scheduled to take effect in the 2017-18 school year.

<sup>17</sup>Consultation shall include issues, such as how the children’s needs will be identified; what services will be offered; and how, where, and by whom the services will be provided; among other things.



---

general, private school students are eligible for equitable services from a district if they (1) reside in a participating public school attendance area in that district and (2) meet criteria related to educational need.<sup>19</sup> Generally, expenditures for services to private school students must be equal to the expenditures for services to public school students on a per-pupil basis, taking into account the number and educational needs of the children to be served.<sup>20</sup>

---

## Role of the U.S. Department of Education

Education is responsible for ensuring that states and districts meet IDEA and Title I-A equitable services requirements. Education's Office of Non-Public Education (ONPE) has a mission to foster maximum participation of nonpublic school students and teachers in federal education programs

---

<sup>18</sup>The district in which the eligible child resides is responsible for ensuring equitable services are provided, regardless of whether the private school he or she attends is located in the district. Similar to the equitable services requirements under IDEA, Title I-A services may be provided directly by the district or through a contract with another entity; services, including materials and equipment, must be secular, neutral, and nonideological; and the public agency must retain control of funds and title to materials, equipment, and property.

<sup>19</sup>Specifically, eligible children are those who have been identified as failing, or most at risk of failing, to meet the state's academic achievement standards on the basis of multiple, educationally related, objective criteria. Certain children may be identified as eligible for Title I-A equitable services solely by virtue of their status; for example, homeless children or children who participated in Head Start, Even Start, or Early Reading First within the past 2 years. Children from preschool through grade 2 are selected solely on the basis of such criteria as teacher judgment, interviews with parents, and developmentally appropriate measures.

<sup>20</sup>Specifically, expenditures for educational services and other benefits to eligible private school children shall be equal to the proportion of funds allocated to participating school attendance areas based on the number of children from low-income families who attend private schools. Districts may determine the number of children from low-income families who attend private schools each year or every 2 years. One of the required consultation topics is the method or sources of data the district will use to determine the number of private school children from low-income families residing in participating public school attendance areas. Districts are authorized to use one of several methods, including: (1) using the same measure of low income used to count public school children; (2) using the results of a survey that, to the extent possible, protects the identity of families of private school students, and allowing such survey results to be extrapolated if complete actual data are unavailable; (3) applying the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area; or (4) using an equated measure of low income correlated with the measure of low income used to count public school children. States and districts may use different methods or criteria to determine income or poverty level for purposes of determining whether children qualify for participation in state private school choice programs.

---

and initiatives. This includes issuing guidance and communicating with national, state, and local educational agencies and associations on nonpublic education topics, including the provision of IDEA and Title I-A equitable services. ONPE also provides parents with information regarding education options for their children.<sup>21</sup>

---

---

Private School  
Choice Programs Are  
Growing, and  
Eligibility Criteria  
Often Include  
Disability Status or  
Income; Data  
Variations Complicate  
Comparison of  
Student  
Characteristics  
across Programs

---

Participation in Private  
School Choice Programs  
Is Increasing

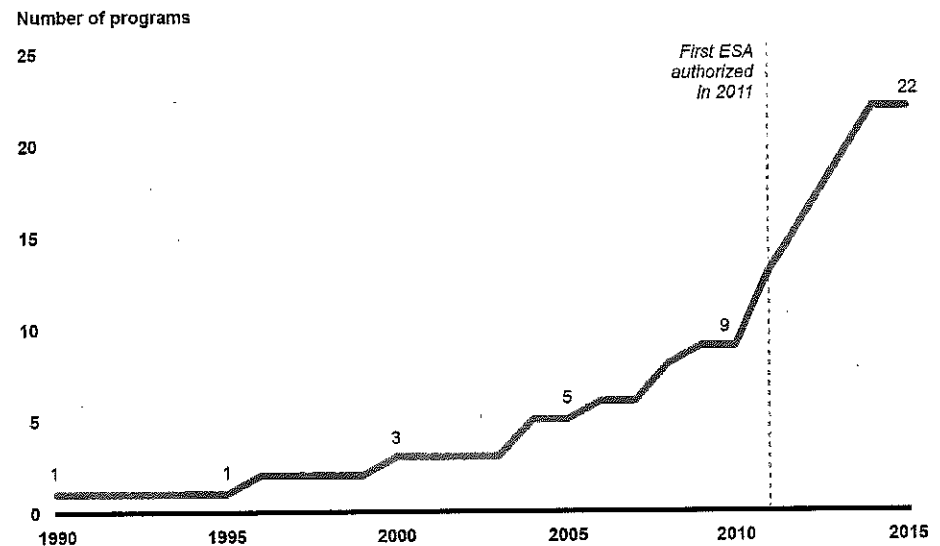
Participation in private school choice programs has more than doubled in the past 5 years, according to our survey and related follow-up. From school year 2010-11 through school year 2014-15, participation in private school choice programs grew from approximately 70,000 students to

---

<sup>21</sup>As part of this work, ONPE issued the report, U.S. Department of Education, Office of Innovation and Improvement, *Education Options in the States: State Programs That Provide Financial Assistance for Attendance at Private Elementary or Secondary Schools* (Washington, D.C.: 2009).

approximately 147,000.<sup>22</sup> Similarly, the funding these programs provided for students increased from approximately \$400 million to \$859 million during that period, according to our survey and follow-up. Since 2010, nine states have started 13 new private school choice programs—seven states started new voucher programs and two states started new ESA programs—contributing to this increase in participation.<sup>23</sup> (See fig. 2.)

**Figure 2: Growth in Voucher and Education Savings Account (ESA) Private School Choice Programs Operating from 1990 to 2015**



Source: GAO surveys of voucher and Education Savings Account (ESA) programs. | GAO-16-712

Note: Figure does not include the two voucher programs and three ESAs that were authorized but not operating during some or all of 2015.

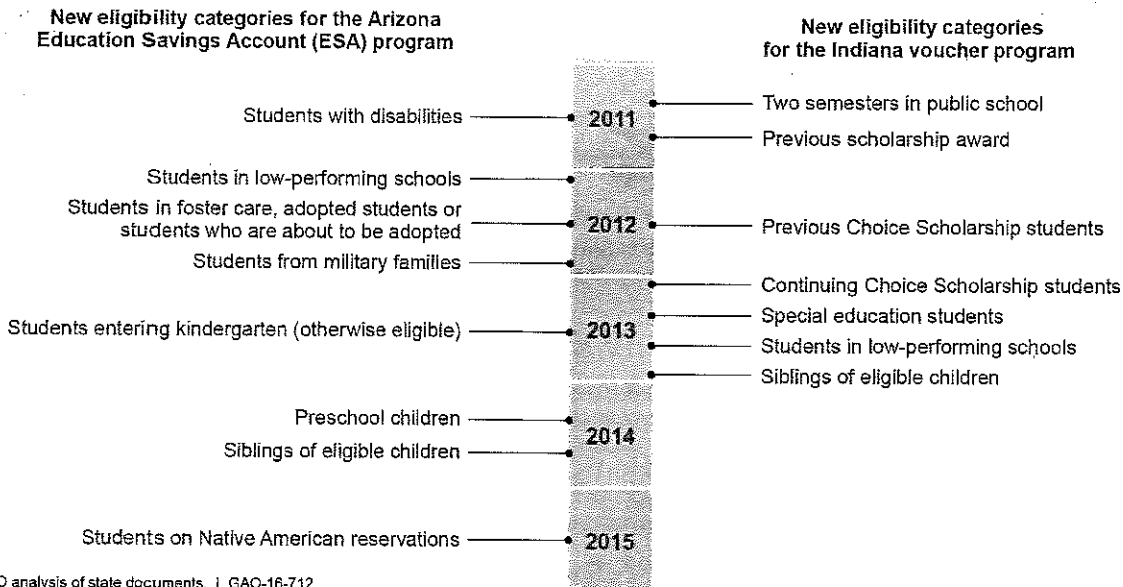
<sup>22</sup>Participation approximations are based on data from state private school choice programs, with the exception of data about Ohio school year 2010-11 participation rates. The school year 2010-11 approximations for Ohio programs are based on data from the Friedman Foundation for Educational Choice because the state did not have data available for that school year.

<sup>23</sup>Ohio considers EdChoice and EdChoice Expansion to be one program. EdChoice is focused on students in low-performing schools. EdChoice Expansion is focused on low-income students. We are considering them to be two programs because they have different eligibility criteria and Ohio provided us with separate survey responses because the data could not be aggregated.

Four of the states that created new programs from 2010 through 2015 already had existing programs. For instance, Wisconsin created the Milwaukee Parental Choice Program—the nation’s first school voucher program—in 1990, added a voucher program for Racine in 2011, and added one for the rest of the state in 2013. Similarly, Ohio launched the Cleveland Scholarship Program in 1996 and has added four programs since then, including programs focused on students with disabilities, students in low-performing schools, and low-income students living outside Cleveland. In addition, Florida’s voucher program began in 2000, and an ESA program began in 2014.

Some states have also increased or lifted enrollment caps or expanded the categories of students eligible to participate in existing private school choice programs, according to program documents we reviewed. For example, figure 3 shows how Arizona’s ESA program and Indiana’s voucher program have expanded program eligibility to new groups of students over time.

**Figure 3: How Arizona’s Education Savings Account (ESA) Program and Indiana’s Voucher Program Have Expanded Eligibility to New Groups of Students**



Source: GAO analysis of state documents. | GAO-16-712

## Student Eligibility Criteria for Private School Choice Programs Include Students' Residence, Disability Status, and Family Income

School voucher and ESA programs consider various factors when determining whether students are eligible to participate, according to our survey and review of state documents. For example, 7 of the 20 voucher programs are limited to students residing in specific areas, school districts, or who are attending low-performing public schools, while the remaining voucher programs and all ESA programs are open to qualifying students statewide. For instance, Wisconsin has a program specific to Milwaukee and another for Racine, and Ohio's EdChoice Scholarship Program focuses on those students who attend low-performing schools. In contrast, Indiana's Choice Program is open to eligible students across the state.

In addition to students' place of residence, almost all voucher and ESA programs used disability status or family income as eligibility criteria, according to our surveys. See table 2 and Appendix II.

**Table 2: Use of Family Income and Disability Status as Eligibility Criteria for Private School Choice Programs, as of 2015**

| Eligibility criterion   | Number of voucher programs operating in 2015 that used criterion | Number of education savings account (ESA) programs authorized by 2015 that used criterion |
|---|--|---|
| Student's family income is below a certain level                                  | 8  | 0   |
| Student has an identified disability or an Individualized Education Program (IEP) | 10   | 4   |
| Either family income or disability status   | 1 <sup>a</sup>   | 0   |
| Neither family income nor disability status                                       | 1 <sup>b</sup>   | 1 <sup>c</sup>  |

Source: GAO surveys of voucher and ESA programs. | GAO-16-712

Note: Values in the table above indicate the number of programs that responded in our survey that either: "students must always meet this criterion to be eligible" or "this criterion is one of several ways a student may be eligible." Three of the five ESAs included in this table were authorized but not operational at the start of school year 2015-16.

<sup>a</sup>Indiana's Choice Program requires all students to meet income requirements, plus one of seven other characteristics. One of these additional characteristics is disability (i.e., a student requires special education or related services).

<sup>b</sup>Attending a low-performing school is the key eligibility criterion for the Ohio Educational Choice Scholarship Program.

<sup>c</sup>The Nevada Education Savings Account Program is open to all K-12 students in the state provided that they have attended a public school for 100 consecutive days prior to applying.

---

Programs vary in how they define eligible disabilities and family income thresholds, according to our review of state documents. For example, some programs that focus on students with disabilities are open to any student with a current IDEA individualized education program (IEP) from their home public school district. Other programs are limited to students with specific disability diagnoses, such as autism, dyslexia, or a speech or language impairment. Programs have different income thresholds as well. For instance, Wisconsin's Milwaukee and Racine programs offer vouchers to eligible students with family incomes at or below 300 percent of the federal poverty level, whereas students from families at or below 200 percent of the federal poverty level are eligible for vouchers through Ohio's EdChoice Expansion Program.<sup>24</sup>

Programs also often reported that they consider prior program participation or prior public school attendance when determining initial student eligibility or continued eligibility in subsequent years. Twelve of the 20 school voucher programs and three of the five ESAs we surveyed consider students' prior participation in their program when determining annual eligibility. For example, in all of Wisconsin's voucher programs the income limits do not apply if the student continues in the program in subsequent years. As a result, students whose family income increases over time can continue in the program as long as they initially met income eligibility requirements. In addition, 11 of the 20 operating school voucher programs and four of the five authorized ESAs we surveyed reported that one eligibility criterion was prior attendance in a public school for a set minimum number of days.<sup>25</sup>

---

<sup>24</sup>The "federal poverty guidelines," which are used in determining eligibility or distribution of funding for certain federal programs, are updated by the Department of Health and Human Services each year. In 2015, the federal poverty guideline for a family of four in the 48 contiguous states and the District of Columbia was \$24,250. Annual Update of the Department of Health and Human Services Poverty Guidelines, 80 Fed. Reg. 3236 (Jan. 22, 2015). Non-federal programs may in some cases elect to use the federal guidelines as well.

<sup>25</sup>Seven of the 20 operating voucher programs and three of the five authorized ESAs reported using both minimum prior attendance in public schools and prior participation in the program as eligibility criteria.

## Private School Choice Program Funding Amounts and Sources Vary

Just as student eligibility requirements vary across programs, so too does the funding amount that programs provide for students (see table 3).

**Table 3: Average Voucher Amounts and Total Funds Distributed in School Year 2014-15**

|  | Minimum              | Median  | Maximum                | Total                |
|--|----------------------|---------|------------------------|----------------------|
| <b>Average Voucher Amounts</b>                                 | \$2,200              | \$5,500 | \$17,200               |                      |
| <b>Total funds individual programs distributed to students</b> | <b>\$0.6 million</b> |         | <b>\$205.8 million</b> | <b>\$826 million</b> |

Source: GAO survey of voucher programs and documents from program officials | GAO-16-712

Note: These amounts consisted entirely of state funds, with the exception of the federally funded DC voucher program, which provided \$13.95 million for students in school year 2014-15, with an average voucher amount of \$9,222.

The specific voucher amount that a student receives is affected by a student's characteristics or the institution's characteristics in 19 of 20 voucher programs, according to our survey. The most common characteristic affecting the voucher amount is the student's grade level (11 of 20 programs), according to our survey. For instance, some programs reported they have one voucher amount for grades K-8 and another, higher, voucher amount for grades 9-12. Students' disability status also affected voucher amounts in 7 of 20 programs. For example, Ohio's Jon Peterson Scholarship Program has six voucher funding amounts based on a student's type of disability.

About half of programs also consider private school tuition or public school funding when determining voucher amounts for individual students. In our survey, 8 of the 20 voucher programs reported that private school tuition affects the voucher amount, and 6 of 20 voucher programs reported that the amount public schools spend on their students affects the student's voucher amount. For both ESA programs currently operating, the annual amount is approximately 90 percent of the state funding the district would have received had the student attended public school.<sup>26</sup> (See table 4 for more detailed information about factors that affect voucher amounts.)

<sup>26</sup> For example, in Arizona, ESA students receive 90 percent of the state funds that would have gone to their public school district to support their education. For students with disabilities, this amount is generally more than the amount for students without disabilities.

**Table 4: Student and Institutional Characteristics That Affect Students' Annual Voucher Amounts for School Year 2014-15**

| State        | Program  | Student Characteristics |            |               |                | Institutional Characteristics |                        |                       |  |
|--------------|--|-------------------------|------------|---------------|----------------|-------------------------------|------------------------|-----------------------|--|
|              |  | Grade level             | Disability | Family income | Household size | Geographic location           | Private school tuition | Public school funding | Other factors not related to the student |
| DC           | Opportunity Scholarship Program  | ✓                       | —          | —             | —              | —                             | —                      | —                     | ✓  |
| FL           | McKay Scholarship Program for Students with Disabilities                 | ✓                       | ✓          | —             | —              | ✓                             | ✓                      | ✓                     | —  |
| GA           | Special Needs Scholarship Program  | —                       | ✓          | —             | —              | —                             | —                      | ✓                     | —  |
| IN           | Choice Scholarship Program   | —                       | ✓          | ✓             | ✓              | ✓                             | ✓                      | —                     | —  |
| LA           | Louisiana Scholarship Program  | ✓                       | ✓          | —             | —              | —                             | ✓                      | ✓                     | —  |
|              | School Choice Program for Certain Students with Exceptionalities         | —                       | —          | —             | —              | ✓                             | —                      | ✓                     | —  |
| MS           | Dyslexia Therapy Scholarship Program                                     | ✓                       | —          | —             | —              | —                             | —                      | —                     | ✓  |
|              | Nate Rogers Scholarship for Students with Disabilities Program           | —                       | —          | —             | —              | —                             | —                      | ✓                     | —  |
| NC           | Opportunity Scholarship Program  | —                       | —          | ✓             | ✓              | —                             | ✓                      | —                     | —  |
|              | Disabilities Grant Program   | —                       | —          | —             | —              | —                             | ✓                      | —                     | —  |
| OH           | Autism Scholarship Program   | —                       | —          | —             | —              | —                             | —                      | —                     | —  |
|              | Cleveland Scholarship Program  | ✓                       | —          | —             | —              | ✓                             | —                      | —                     | —  |
|              | Educational Choice (EdChoice) Scholarship Program <sup>a</sup>           | ✓                       | —          | —             | —              | ✓                             | —                      | —                     | —  |
|              | Educational Choice (EdChoice) Scholarship Program Expansion <sup>a</sup> | —                       | —          | ✓             | ✓              | ✓                             | ✓                      | —                     | —  |
|              | Jon Peterson Special Needs Scholarship Program                           | —                       | ✓          | —             | —              | —                             | —                      | —                     | —  |
| OK           | Lindsey Nicole Henry Scholarship Program for Children with Disabilities  | ✓                       | ✓          | —             | —              | ✓                             | ✓                      | ✓                     | —  |
| UT           | Carson Smith Special Needs Scholarship Program                           | ✓                       | ✓          | —             | —              | —                             | ✓                      | —                     | —  |
| WI           | Milwaukee Parental Choice Program  | ✓                       | —          | —             | —              | —                             | —                      | —                     | ✓  |
|              | Racine Parental Choice Program   | ✓                       | —          | —             | —              | —                             | —                      | —                     | ✓  |
|              | Wisconsin Parental Choice Program  | ✓                       | —          | —             | —              | —                             | —                      | —                     | ✓  |
| <b>Total</b> |  | <b>11</b>               | <b>7</b>   | <b>3</b>      | <b>3</b>       | <b>7</b>                      | <b>8</b>               | <b>6</b>              | <b>5</b>                                 |

Legend:

✓ = Program officials responded in our survey that a given student or institutional characteristic affected the annual voucher amount for eligible students during school year 2014-15.

— = Program officials responded in our survey that a given student or institutional characteristic did not affect the annual voucher amount for eligible students during school year 2014-15.

Source: GAO survey of voucher programs | GAO-16-712

<sup>a</sup>Ohio considers EdChoice and EdChoice Expansion to be one program. EdChoice is focused on students in low-performing schools. EdChoice Expansion is focused on low-income students. We are



---

considering them to be two programs because they have different eligibility criteria and Ohio provided us with separate survey responses because the data could not be aggregated.

With the exception of the federally funded DC Opportunity Scholarship Program, private school choice programs are funded by states. The programs we visited reported using a variety of funding approaches, including different approaches within the same state. For example, in school year 2014-15, Wisconsin funded the Racine and Wisconsin Parental Choice Programs entirely with state general funds. However, it funded the Milwaukee Parental Choice Program with a mix of state general funds and state funds that would have otherwise gone to the Milwaukee Public School District (68 percent and 32 percent, respectively, in 2014-15, according to state officials). According to officials, Milwaukee may levy additional property taxes on city residents to recoup the lost state funds.

---

#### Variations in Data Availability and Definitions Complicate the Ability to Compare Student Characteristics across Voucher Programs

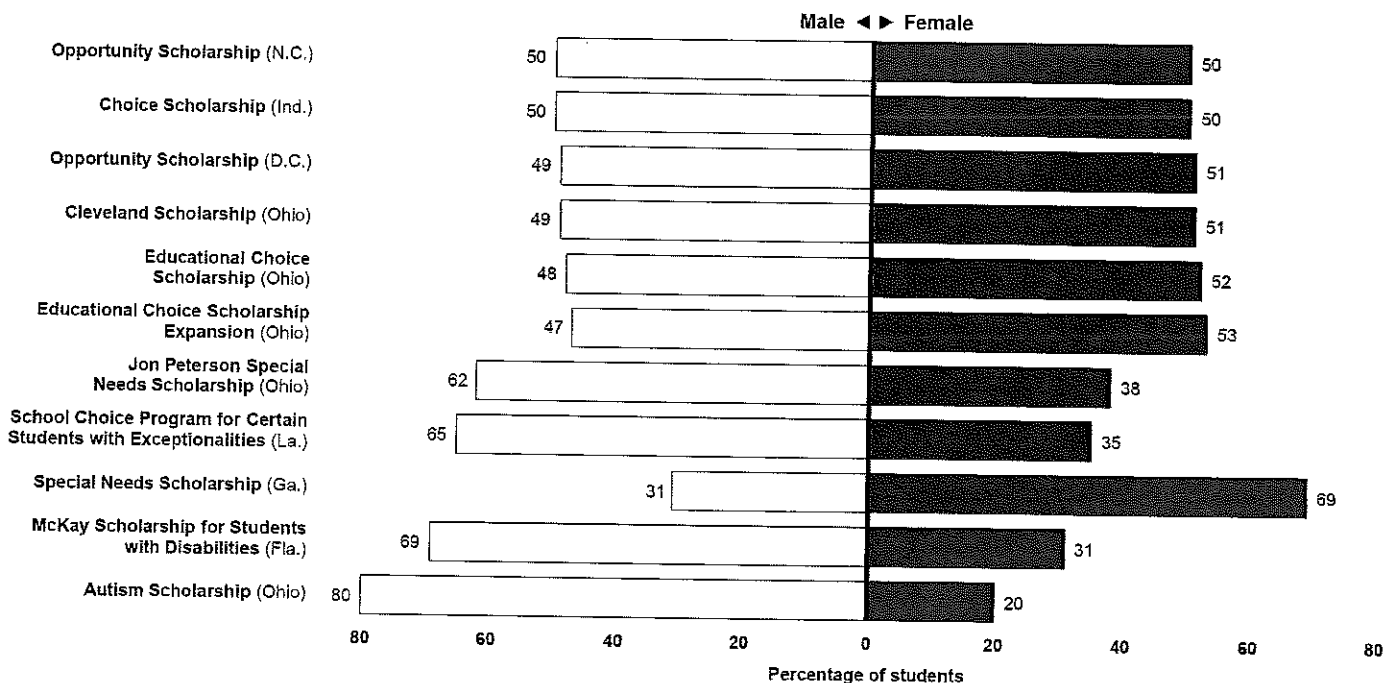
It is difficult to compare the characteristics of voucher students across states because programs vary in the extent to which they collect such data and how they define key categories.<sup>27</sup> For example, according to our survey responses, programs most frequently collected and reported information about students' gender and race and ethnicity, but this information was only collected and reported by about half of the voucher programs. Further, programs collected information about racial and ethnic categories differently, making it difficult to meaningfully compare this information across programs. Fewer than half of the programs reported collecting information about students' disabilities, incomes, or English Learner status in our survey.

*Gender:* Twelve voucher programs—representing approximately 73 percent of voucher students nationwide—collected and reported gender information in our survey (see fig. 4). Half of these programs reported a roughly even distribution of male and female participants. The remaining programs were all specifically for students with disabilities and reported varied distributions of male and female participants.

---

<sup>27</sup>GAO did not survey ESA programs about student characteristics, given the small number of operating programs.

**Figure 4: Student Gender Breakdown for School Year 2014-15 among Voucher Programs That Reported Data**



Source: GAO survey of voucher programs. | GAO-16-712

Note: We did not include information on one program because it enrolled fewer than 10 students.

*Race and Ethnicity:* Twelve of the 20 voucher programs, representing approximately 78 percent of voucher students nationwide, collected and reported students' race and ethnicity in our survey.<sup>28</sup> However, these data

<sup>28</sup>Four additional programs in two states responded that they collect information about race and ethnicity, but they could not report the results. For example, one of the states we visited said they request this information in individual student applications, but they do not compile the results for reporting purposes.

---

cannot be compared across all programs because the programs collected certain race and ethnicity categories in different ways.<sup>29</sup>

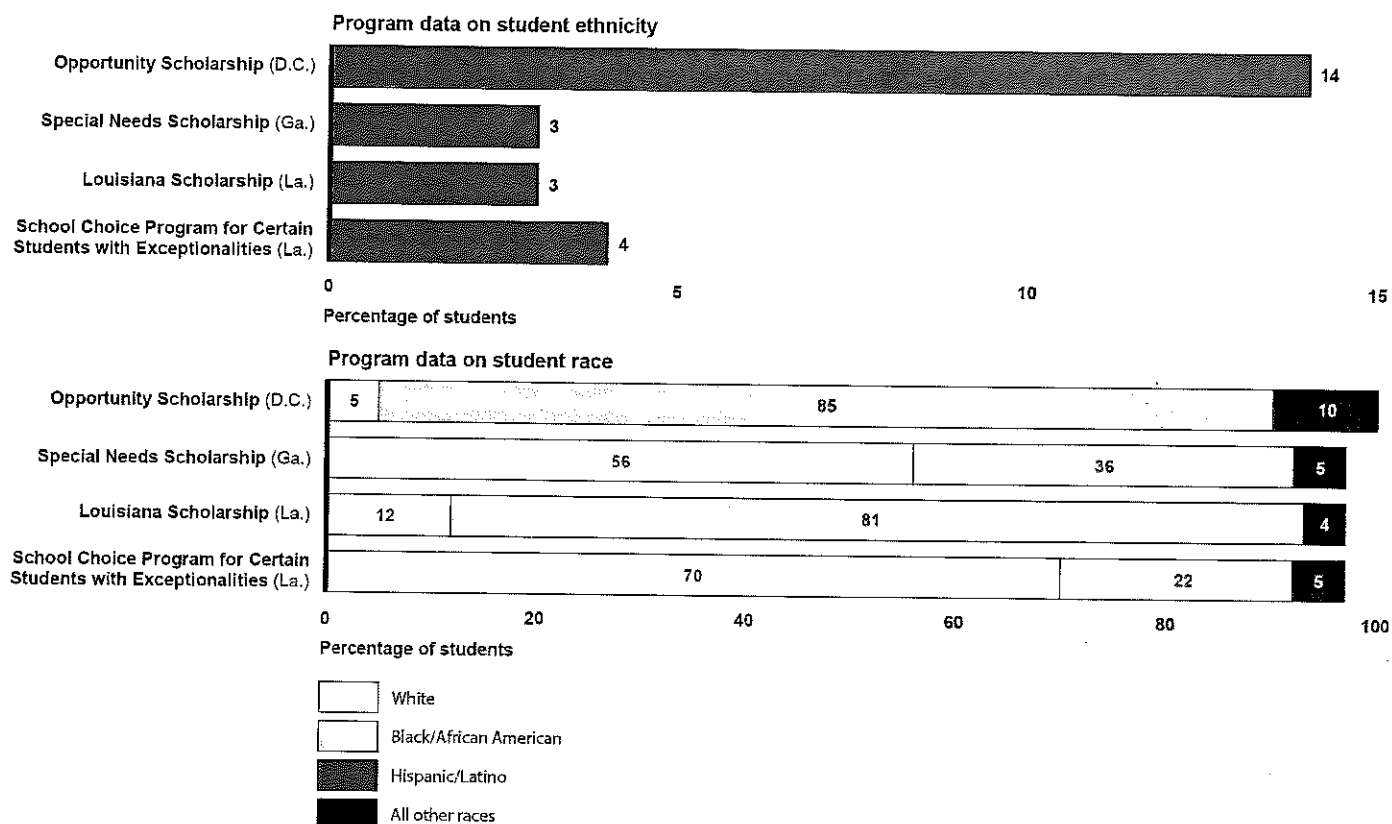
- **Ethnicity.** Four programs reported “Hispanic/ Latino” separately from racial categories such as “White” or “Black/African American”, and the other eight programs collected “Hispanic/Latino” as a racial category. Data with different definitions cannot be meaningfully compared across programs because students who identify as ethnically “Hispanic/Latino” are also asked to identify with a racial category like “White” or “Black/African American” in some programs but not others. (See fig. 5 and fig. 6 for racial and ethnic information by program, grouped by how the program collected information about whether students were “Hispanic/Latino”.)
- **Race.** Programs also aggregated racial categories in inconsistent ways. For example, one large program included students identified as “American Indian/Alaska Native”, “Asian”, “Native Hawaiian/Pacific Islander”, and “race was not reported” into the “other” category in our survey, and another program reported specific numbers for these racial categories.<sup>30</sup>

---

<sup>29</sup>A meaningful comparison of the race and ethnicity of private school choice students to their public school counterparts would require capturing the race and ethnicity of the subpopulation of eligible students in the correct geographic area. For example, to meaningfully compare the race and ethnicity of those students in the Georgia Special Needs Scholarship, one would need to know the demographics of those students who were eligible to apply because they had a qualifying disability IEP and met residency or public school attendance requirements. Such analysis was beyond the scope of this study.

<sup>30</sup>Given the variation among programs’ definitions, GAO aggregated the results for such students to provide consistent information.

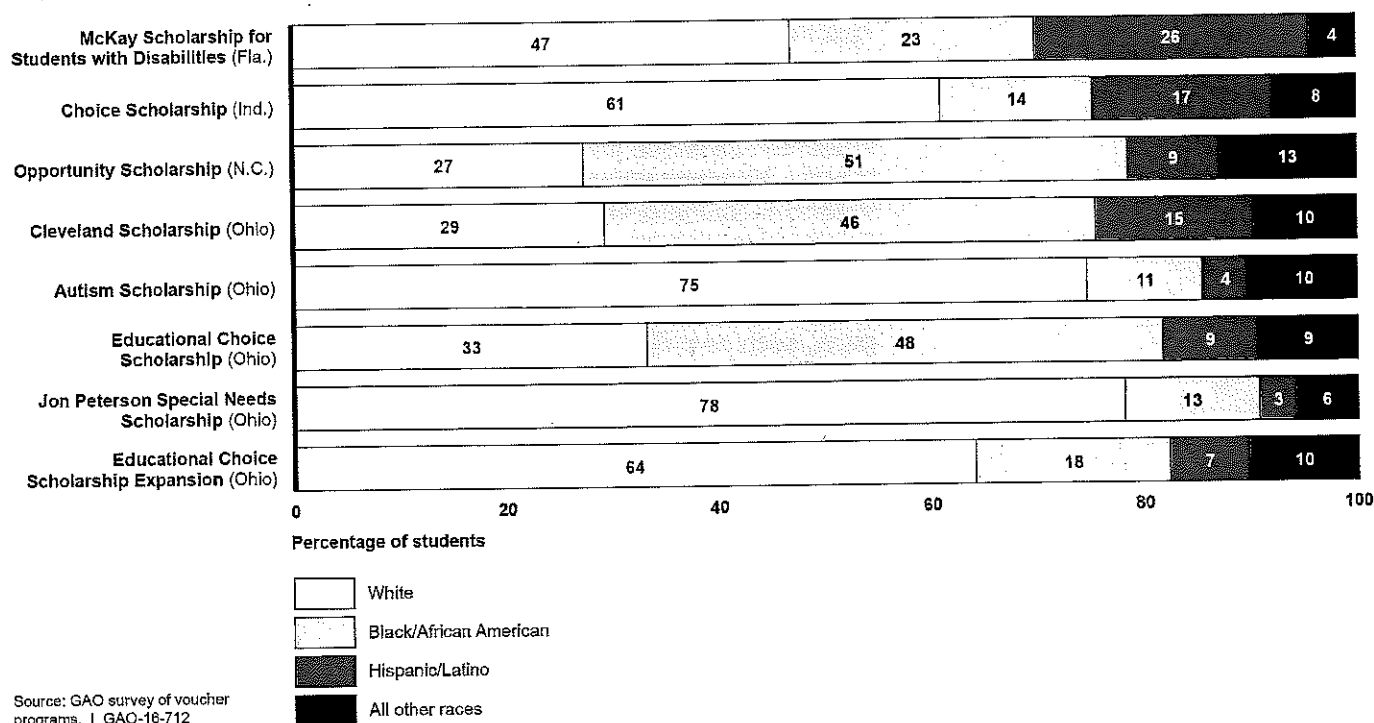
**Figure 5: Racial and Ethnic Makeup of Voucher Students for School Year 2014-15 in the Four Programs That Reported Hispanic or Latino Ethnicity Separately from Race**



Source: GAO survey of voucher programs. | GAO-16-712

Note: Program responses to the second chart do not total 100 percent in cases where programs did not report data on one or more students.

**Figure 6: Racial and Ethnic Makeup of Voucher Students for School Year 2014-15 in the Eight Programs That Reported Hispanic or Latino as a Racial Category**



According to our survey responses, voucher programs less frequently collected information about other student characteristics, and the information collected was more limited:

- **Disability:** About half of the voucher programs designed to serve students with disabilities did not collect information about participating students' disability type, according to our survey.<sup>31,32</sup> This included the

<sup>31</sup>Among the 10 programs specifically for students with disabilities, 3 were for specific disabilities (Dyslexia, Autism, and speech-language disabilities), and 7 were open to students with a range of disabilities. Four of the 7 programs for students with a range of disabilities reported information about disability types in our survey. Indiana was the only program not specifically for students with disabilities that collected information on disability type. This program requires all students to meet income requirements, plus one of seven other characteristics. One of these additional characteristics is disability (i.e. a student requires special education or related services).

---

largest program for students with disabilities, which had over 30,000 participants in school year 2014-15. When programs did collect information on students' disability type, the two most common types reported on our survey were "other health impairment" and "specific learning disability".

- *Family Income:* Five programs—representing 30 percent of voucher students—collected and reported that they had data on student family income. Although student family income is frequently used to determine students' eligibility, programs may not always compile or have access to these data. For example, programs may collect income data to determine students' initial eligibility but not compile or analyze those data. Alternatively, programs may rely on an outside party, such as a different state agency or participating private schools, to determine income eligibility.
- *English Learners:* Two programs—representing 24 percent of voucher students—collected and reported data on English Learners. During school year 2014-15, English Learners made up less than 1 percent of participating students in one program and 8 percent in the other.

---

## Private School Choice Programs Placed Some Requirements on Participating Private Schools

---

<sup>32</sup>Our survey asked how many voucher students had each of the following disabilities in school year 2014-15: autism; deaf-blindness; deafness; developmental delay; emotional disturbance; hearing impairment; intellectual disability; multiple disabilities; orthopedic impairment; other health impairment; specific learning disability; speech or language impairment; traumatic brain injury; visual impairment, including blindness; and other.

---

## Most Private School Choice Programs Required Minimum Teacher Qualifications and Student Assessments

During school year 2014-15, the number of participating private schools per voucher program ranged from 1 to 1,301, according to our survey, and almost all programs reported that schools must be accredited or otherwise reviewed before participating.<sup>33</sup> Specifically, 19 of the 20 operating voucher programs and one of the two operating ESAs required schools to be accredited or undergo another review process, according to our survey and subsequent document analysis.<sup>34,35</sup> These review processes typically included steps like reviewing financial and safety information, as well as affirming that the school will follow the requirements of the specific school choice program. For example, participating schools in Indiana must agree to assist students with voucher applications. Some states also required and verified that schools met criteria related to curriculum or student performance, such as student test results.

Eighteen of the 20 voucher programs reported in our survey that private school teachers in participating schools must meet minimum education requirements, such as obtaining a bachelor's degree. Officials described the minimum qualifications as different than those for public school teachers in all but 2 of these programs, often because private school teachers were not required to obtain the state teaching credential typically

---

<sup>33</sup>See Appendix III for more information about the number of participating private schools per voucher program and the average number of voucher students per participating private school.

<sup>34</sup>The North Carolina Disabilities Grant Program did not require a review process in school year 2014-15, but it started requiring such a process in school year 2015-16. The Arizona ESA did not require participating private schools to be accredited or otherwise reviewed. All private schools in Arizona are eligible to participate if they are located in the state and do not discriminate on the basis of race, color, or national origin.

<sup>35</sup>In about half the programs, this involved the school receiving accreditation from the state or an external organization, such as a regional or religious accreditation organization. GAO did not assess or verify how each program ensured that accreditation or other types of reviews took place. In the case of the District of Columbia Opportunity Scholarship Program, GAO has previously identified weaknesses in the program's internal controls regarding participating private schools. See GAO, *DISTRICT OF COLUMBIA OPPORTUNITY SCHOLARSHIP PROGRAM: Actions Needed to Address Weaknesses in Administration and Oversight*, GAO-13-805 (Washington, D.C.: September 2013).

---

required for public school teachers. One of two operating ESAs required private school teachers to hold bachelor's degrees.<sup>36</sup>

Most voucher programs and one of the two operating ESAs also required schools to measure the academic performance of enrolled private school choice students, albeit in different ways. Specifically, 17 of the 20 voucher programs require schools to measure student performance through one or more methods, according to program officials and documents.<sup>37</sup> Most commonly, voucher programs required the same tests as required for public school students.<sup>38</sup> In about half of these programs with requirements to measure student performance, schools were required to provide parents with written progress reports in addition to, or instead of, providing test results. Officials at some private schools we visited across the country described advantages, disadvantages, or both perspectives on performance testing requirements, citing them as useful to measure students' progress but costly for both the school to administer and for students who lose instructional time.

---

### Most Private School Choice Programs Did Not Cap Schools' Tuition or Restrict Their Admissions Policies

Thirteen of the 20 voucher programs and both operating ESAs—representing slightly more than half of voucher and ESA students nationwide—did not cap the tuition amounts schools could charge private school choice students, according to our survey and related follow-up. The 7 programs that did cap tuition for some or all private school choice students were located in Louisiana, Ohio, and Wisconsin and were designed to serve low-income students or those in low-performing

---

<sup>36</sup>Both operating ESAs outlined qualifications for other types of educational providers, such as tutors or therapists.

<sup>37</sup>The three voucher programs without performance requirements were for students with disabilities.

<sup>38</sup>This report did not identify how private school choice programs used assessment results or whether they compared results to those for public school students.



---

schools.<sup>39</sup> Six voucher programs reported participating private schools' tuition information in our survey, with average tuition rates ranging from \$5,541 to \$26,266 in school year 2014-15. We found a similar range of tuition amounts among the 12 schools we interviewed.<sup>40</sup> In most of these schools, officials described instances where the school covered some or all of students' additional tuition through scholarships or other programs. Some of the schools we interviewed also charged parents fees for a variety of items or services, such as registration, books, technology, or planning for and documenting progress for students with disabilities.

Most private school choice programs also reported allowing participating private schools to set their own admissions policies. Specifically, 16 of the 20 voucher programs and both operating ESAs—covering 75 percent of all voucher and ESA students nationwide—allowed schools to use admission criteria of their choosing, according to program officials and documents. The remaining 4 programs, located in Louisiana and Wisconsin, required private schools to accept all voucher students if space was available or use a lottery if there were more students than available seats.<sup>41</sup> Advocates of private school choice have written that it is important to allow private schools to set their own admissions criteria because it is central to maintaining a school's autonomy and mission. Conversely, others we interviewed cited concerns that admission criteria may limit student access to certain private schools.

---

<sup>39</sup>According to program documents and our survey, Louisiana prohibited tuition charges over the voucher amount. Ohio's three voucher programs not specifically for students with disabilities prohibited most tuition charges over the voucher amount for families at or below 200 percent of the poverty level. The Cleveland Scholarship Program does permit high schools to charge low-income families tuition above the scholarship amount. Wisconsin's three voucher programs prohibited tuition charges over the voucher amount for all students in grades 8 or lower and for high school students from families at or below 220 percent of the federal poverty level.

<sup>40</sup>This included both voucher and ESA schools. Of the 12 schools selected, officials at one school were not available to be interviewed and agreed to respond in writing to an abbreviated list of GAO questions.

<sup>41</sup>For example, programs in Wisconsin require private schools to accept all eligible voucher students if space is available at the school or if the number of total voucher students is within program participation limits. If more students applied than there are available seats, students must be accepted on a random basis.

---

Officials from many of the schools we interviewed told us that an applicant's disciplinary history and academic achievement were considerations in the admissions process, while religiously affiliated schools varied in their approach to considering students' religion.<sup>42</sup> For example, officials from two schools for students with disabilities said they considered discipline history because aggressive or other inappropriate behavior could adversely affect other students. Once students were enrolled in schools, voucher or ESA programs did not generally set or restrict schools' discipline policies, according to program officials and documents. For example, an Ohio official we spoke with said the state's voucher programs keep schools' policy handbooks on file—including discipline policies and criteria for expulsion—but do not restrict the content of such policies. Wisconsin's three voucher programs prohibit schools from disciplining students due to late payments, but did not restrict schools' disciplinary policies related to student behavior, according to our review of program documents. Religiously affiliated schools we visited varied in whether religion was considered during the admissions process.<sup>43</sup> For example, one school required all students in fourth grade and above to agree to follow a list of religious principles when applying to the school, and officials from another said students with the same religious affiliation as the school received priority during the admissions process. In contrast, officials from four other religiously affiliated schools said religion was not considered during the admissions process, though three of them said most of the student body was affiliated with the school's faith.

There is limited information available about how many private school choice students remained in private schools after they were admitted. In our survey, 6 of the 20 voucher programs—covering 10 percent of voucher students—reported the total number of students who did not

---

<sup>42</sup>This does not include the schools in Wisconsin, which are prohibited from applying admissions criteria for private school choice students. The three Wisconsin voucher programs allow parents to opt their children out of participating in religious activities once they were enrolled. Officials we interviewed at two religiously affiliated schools in Wisconsin said students rarely declined to participate in religious classes or religious services.

<sup>43</sup>Four of 20 voucher programs reported in our survey that they track information about schools' religious affiliation. Among these 4 programs, 69 to 88 percent of participating private schools were religiously affiliated.

---

complete the 2014-15 school year in the same participating school, with totals that ranged from 0 to 8 percent. Anecdotally, private schools we visited cited instances where students left due to academic or financial challenges, or because the student did not feel the school's culture met their needs. Officials at two schools described scenarios in which enrolled students with disabilities left the school because the student required more services than the school could provide.

---

## Providing Federally Funded Equitable Services Can Be Complicated by Private School Choice Programs, and Education Has Not Provided Related Guidance

---

### Selected Public School Districts Work with Private Schools and Varied in How They Provide Equitable Services

Districts have flexibility in how they provide IDEA and Title I-A equitable services to private school students, and officials in the eight public school districts we interviewed reported using different approaches. These selected districts also varied in the number of private school students for whom they provided equitable services (see table 5).

**Table 5: Selected Districts Varied in Reported Number of Private Students Who Received IDEA and Title I-A Equitable Services and Amount of Federal Funds Set Aside for Equitable Services, School Year 2014-15**

|  | Arizona     |             | Indiana     |             | Ohio        |             | Wisconsin   |                   |
|--|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------------|
|  | Large Urban | Small Rural | Large Urban | Small Rural | Large Urban | Small Rural | Large Urban | Mid-size Suburban |
| IDEA Equitable Services for Parentally Placed Private School Students with Disabilities  |             |             |             |             |             |             |             |                   |
| Number of parentally placed private school students who received IDEA equitable services | 38          | <10         | 709         | 25          | 413         | 0           | 208         | 115               |
| Total IDEA funds for public and private school students                                  | \$5.33 mil  | \$0.33 mil  | \$9.04 mil  | \$0.60 mil  | \$13.42 mil | \$0.63 mil  | \$22.54 mil | \$4.82 mil        |
| Percent IDEA funds set aside for private students  | 0.6%        | 7.5%        | 10.3%       | 7.3%        | 5.5%        | 1.6%        | 4.7%        | 3.5%              |
| Title I-A Equitable Services for Students from Disadvantaged Areas                       |             |             |             |             |             |             |             |                   |
| Number of private students who received Title I-A services                               | 31          | 160         | 663         | 0           | 2,662       | 16          | 6,514       | 799               |
| Total Title I-A funds for public and private school students                             | \$4.1 mil   | \$0.98 mil  | \$11.1mil   | \$0.28 mil  | \$35.0 mil  | \$1.5 mil   | \$36.0 mil  | \$5.0 mil         |
| Percent Title I-A funds generated for services for private students                      | 0.4%        | 5.3%        | 9.1%        | n/a         | 7.1%        | 1.5%        | 26.9%       | 8.5%              |

Source: GAO analysis of district-reported information. | GAO-16-712

Note: "Title I-A" refers to Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. "IDEA" refers to Part B of the Individuals with Disabilities Education Act.

Once funding amounts have been calculated, districts we visited reported using a variety of approaches, in consultation with private schools, to implement federal IDEA and Title I-A equitable services requirements in three key areas: (1) identifying eligible students, (2) determining which students to serve, and (3) providing services.<sup>44</sup> The processes for

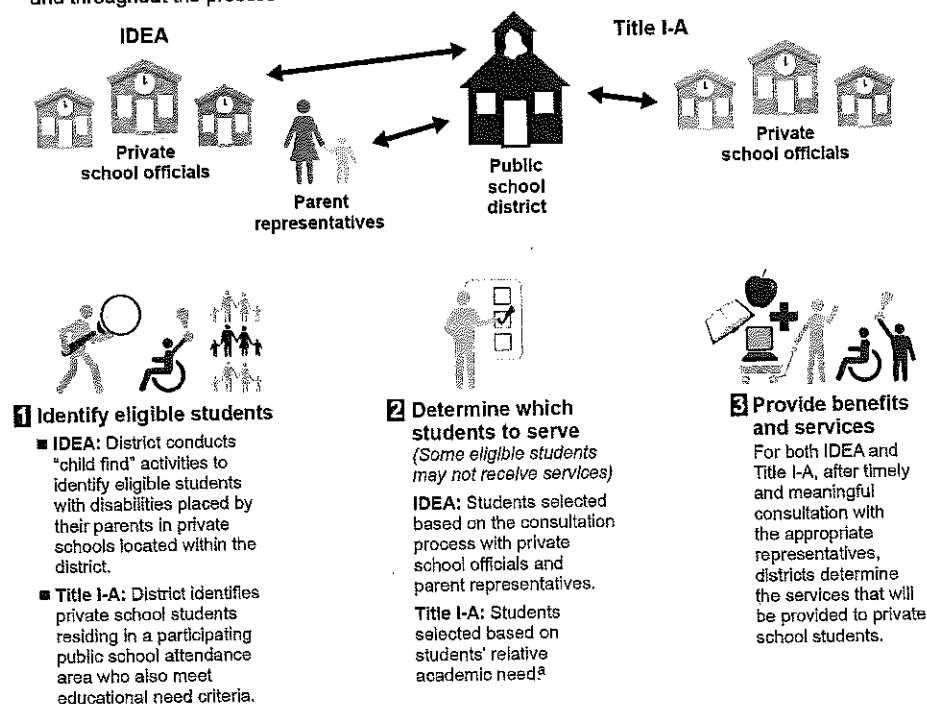
<sup>44</sup>In this report, we focused on selected districts' efforts to deliver equitable services. We did not include information on districts' efforts to comply with other requirements, such as how they calculate the funding amounts to be used for equitable services under each program.

implementing IDEA and Title I-A equitable services requirements are similar, though there are key differences between these federal programs, such as the populations served and the role of parents in the consultation process. See figure 7 for key steps and requirements for providing IDEA and Title I-A equitable services.

**Figure 7: Key Steps in IDEA and Title I-A Requirements for Providing Equitable Services to Private School Students**

#### Consultations

Both IDEA and Title I-A require consultations during the design and development of services, and throughout the process



Source: Education reports and guidance on the Individuals with Disabilities Education Act (IDEA) and Title I, Part A, of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (Title I-A). | GAO-16-712

<sup>a</sup>In consultation with private school officials, a district must establish multiple, educationally related, objective criteria to determine which private school children are eligible for Title I-A services, and, within the eligible group, which children will be served. To the extent appropriate, the district must select private school children who are in greatest need of educational assistance.

Note: This figure presents a high-level overview of IDEA and Title I-A requirements for providing equitable services to private school students. For clarity purposes, we omitted some steps and requirements, such as the process for calculating the funding amount to be used for equitable services.

---

## IDEA Equitable Services for Students with Disabilities

### Identifying, Locating, and Evaluating Eligible Students

In the eight public school districts we selected, identifying private school students eligible for IDEA equitable services—known as child find—included outreach to local private schools and daycares and advertisements to the community, such as fliers, TV and radio ads, and posters, according to district officials. One large urban district used a “neighborhood approach” in which each public school is responsible for child find activities at any nearby private schools. Officials from private schools we interviewed generally reported that they understood how to identify and refer students with disabilities to the district for evaluations. Some private school officials described using tools or guidance, like teacher surveys, to help identify students who may have a disability.

### Determining which Students to Serve

Districts have flexibility in determining which IDEA services to provide to parentally placed students because these students do not have individual entitlements to special education or related services.<sup>45</sup> The districts we visited reported providing IDEA equitable services to between 28 and 100 percent of eligible private school students (see table 6). In these districts, officials reported different ways of determining which IDEA-eligible students to serve, in consultation with private schools and parents. For example, officials from one urban district told us that after consultation they decided to exclusively serve students in the lower grades who had speech therapy needs. Officials at another district described making decisions about the number of students to serve based on the speech therapists’ available caseloads and used a waitlist for the students that exceeded that amount.

---

<sup>45</sup>IDEA does not dictate the types or amounts of special education and related services districts must provide to their population of parentally placed children with disabilities in complying with IDEA’s equitable services requirements. Which services the district will provide to this population and the amounts of services parentally placed students with disabilities will receive are discussed in the consultation process and are based on the numbers and needs of the district’s population of parentally placed children with disabilities. However, the district must make the final decisions with respect to the services to be provided to eligible parentally placed children with disabilities. 34 C.F.R. §§ 300.134, 300.137, 300.138.

**Table 6: Reported Proportion of Parentally Placed Private School Students with Disabilities Who Received IDEA Equitable Services in Selected Districts, School Year 2014-15**

|  | Arizona     |             | Indiana     |             | Ohio        |             | Wisconsin   |                   |
|--|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------------|
|  | Large Urban | Small Rural | Large Urban | Small Rural | Large Urban | Small Rural | Large Urban | Mid-size Suburban |
| Percent of Eligible Private Students Receiving IDEA Equitable Services | 84          | 100         | 81          | 86          | 29          | n/a         | 28          | 97                |

Source: GAO analysis of district-reported information. | GAO-16-712

Note: N/A indicates that private schools did not have students receiving IDEA equitable services.

## Providing Services

Speech and language therapy was the most common service offered, according to officials in all selected districts. Officials at two private schools also said they received equipment for eligible students, such as iPads or computers. All of the eight districts provided services to students on site at the private schools, using public school staff to deliver the services in some cases and contractors in others. Education guidance states that districts providing on-site services may be less costly and could help eliminate the need to transport children to and from services.<sup>46</sup> One district provided disability services through a consortium with other districts, which they reported created efficiencies in administering these services.

## Title I-A Equitable Services for Students from Disadvantaged Areas

## Identifying Eligible Students

Selected public school districts identified private school students who were eligible to receive services in several ways, using criteria established in consultation with private schools. Districts we visited used information like report card grades, state test scores, or teacher recommendations to determine students with "educational need".

<sup>46</sup>Education's guidance states that, to the extent consistent with law, districts are encouraged to provide IDEA equitable services at private schools. If services are not offered on the private school site, the district is responsible for providing transportation to the service site if it is necessary for the student to benefit from or participate in the service. Transportation is not required to be provided between a student's home and his or her private school. 34 C.F.R. § 300.139.

## Determining which Students to Serve

Districts and private schools have flexibility in how they distribute Title I-A services among eligible private school students; some districts provided services to all eligible students while others served a subset of students (see table 7). In cases where services are provided to a subset of students, district officials, in consultation with private school officials, must determine which children will receive services. Officials at districts and private schools we interviewed described various methods for prioritizing potentially eligible students for services. For example, two districts listed all eligible students, ranked by level of academic need, and served those with the greatest academic need first. Officials from another large school district said private school principals were responsible for prioritizing among eligible students, using criteria that were specific to the structure and academic expectations of each particular school.

**Table 7: Reported Proportion of Private School Students Residing in Selected Participating Public School Attendance Areas Who Received Title I-A Services, School Year 2014-15**

|   | Arizona     |             | Indiana     |             | Ohio        |             | Wisconsin   |                   |
|---|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------------|
|   | Large Urban | Small Rural | Large Urban | Small Rural | Large Urban | Small Rural | Large Urban | Mid-size Suburban |
| Percent of Private School Students Residing in Participating Public School Attendance Areas Who Received Title I-A Services | 100         | 100         | 30          | n/a         | 51          | 36          | 31          | 39                |

Source: GAO analysis of district information. | GAO-16-712

Note: N/A indicates that no private schools had students who received Title I-A equitable services.

## Providing services

Most (seven of eight) of the districts we visited provided math and/or reading tutors who traveled to private schools to provide Title I-A equitable services onsite, according to district officials. Officials we interviewed in two districts reported contracting with a private company to deliver instructional services to private school students. Officials in three other districts described sending public school personnel to private schools, and one district joined a consortium of public school districts to consolidate the administration and provision of equitable services. Not all private schools with children eligible to receive Title I-A equitable services participate in those services. For example, three private schools we visited told us they did not participate in Title I-A equitable services. Officials at these schools told us that after learning about Title I-A equitable services they informed the district that they were not interested



---

in participating for various reasons, such as concern about administrative burden.<sup>47</sup>

---

**Officials Reported That Private School Choice Programs Can Complicate Providing Equitable Services, and Education Has Not Developed Related Guidance**

Because the eligibility criteria for most private school choice programs are focused on students with disabilities or disadvantaged students, increased participation in private school choice programs may increase the number of private school students who are eligible for and receive federally funded IDEA and Title I-A equitable services. Officials in most public school districts we visited (six of eight) could not quantify the financial implications of the private school choice programs on the district, especially given that such shifts occurred simultaneously with other factors affecting district enrollment and budgets.

However, state and public school district officials we interviewed said providing equitable services in the context of private school choice programs created confusion and made these services more time-consuming to provide. Specifically, some of the state and district officials we interviewed said they were confused about whether participation in private school choice programs changed students' eligibility for federally funded equitable services or changed the public school district's roles and responsibilities in providing these services. For example:

- Officials from two of the districts we visited had questions about whether a student's participation in private school choice programs changed their eligibility or priority for IDEA and Title I-A equitable services. For example, in one state we visited, we found instances in which state and district officials reported conflicting information about whether private school choice students were eligible for IDEA equitable services. Education and state officials told us that private school choice students were considered to be parentally placed private school students, and eligibility for IDEA services would not be affected by being in a choice program. However, officials at one district within the state said these students would not be eligible for

---

<sup>47</sup>Education's 2007 report found that the most common reason given by private schools for not having participants in ESEA equitable services programs was a decision not to be involved in federal programs. U.S. Department of Education, Office of Planning, Evaluation and Policy Development, Policy and Program Studies Service, *Private School Participants in Federal Programs Under the No Child Left Behind Act and the Individuals with Disabilities Education Act* (Washington, D.C.: 2007).

---

IDEA services, even if otherwise qualified. Officials from this state told us they would like more guidance from Education related to participation in private school choice programs and IDEA eligibility. These state officials reported that few district officials understood how to implement equitable services requirements when students are also participating in private school choice programs.

- In two states we visited, officials said private school choice programs contributed to confusion about IDEA equitable service requirements related to disability evaluations and reevaluations. Officials said there were significant increases in requests for disability evaluations because parents wanted to know if their children qualified for private school choice programs that served children with disabilities or that provided larger amounts to students with specific types of disabilities. For example, officials in one state said the private school choice programs have led to more parental requests for districts to re-evaluate students to see if they qualify for an autism spectrum diagnosis, because this diagnosis is associated with a higher private school choice funding amount than other diagnoses. Officials in two states also told us districts had questions related to the frequency of required evaluations and reevaluations under IDEA. Officials in one state reported they clarified the circumstances under which districts were required to conduct evaluations and re-evaluations for one district, but they also said guidance from Education would help clarify requirements for all districts. Officials said this can also pose administrative and financial strains for districts because, under IDEA, districts cannot use equitable services funds to pay for these evaluations.<sup>48</sup>
- Officials in two of the districts we visited said new private schools opened after private school choice programs were enacted and created some confusion and increased workloads as the districts incorporated large numbers of new private schools into their child find and equitable services plans.<sup>49</sup> New private schools may not be aware of their role and the requirements related to equitable services,

---

<sup>48</sup>As previously mentioned, the cost of child find, including individual evaluations, may not be considered in determining whether a district has met its obligations related to proportionate share.

<sup>49</sup>Officials reported consulting with between 2 and 112 private schools to provide equitable services in school year 2014-15.

---

according to officials from two of the districts we visited. For example, officials in one district said a school requested Title I-A equitable services immediately after opening. The district was unsure how to proceed in this case because in their state districts use private schools' enrollment information from the prior year to determine Title I-A allocations for private school students. Officials from the two districts also noted that providing equitable services at a larger number of schools may involve conducting more consultations and traveling to more locations.

- As more students have taken advantage of expanding voucher and ESA programs, the districts we spoke with said they generally needed to scale up their equitable services programs, and they reported facing challenges in doing so. Specifically, officials from two large districts reported that using more of their federal Title I-A funds for services in private schools has affected the level and nature of the services for public school students. For example, officials in one district also said that because more of its federal Title I-A funds were used to provide services to increasing numbers of private schools students, the district was no longer able to pay for additional services or develop programs for those public school students who were most academically at risk. In addition, officials from two other districts described providing services to students in private schools as less efficient because teachers or tutors spend time traveling from school to school.

The 2015 reauthorization of the Elementary and Secondary Education Act of 1965—the Every Student Succeeds Act (ESSA)—modified the Title I-A equitable services provisions, and in some districts, these changes may increase the proportion of Title I-A funding set aside to serve eligible private school students. Officials from two districts we visited expressed concern about the upcoming changes to the Title I-A equitable services provisions, especially in the context of expanding private school choice programs.<sup>50</sup>

---

<sup>50</sup>Other changes made by ESSA to the Title I-A equitable services requirements include, among other things: (1) states must designate an ombudsman responsible for monitoring and enforcement; (2) the statutory list of topics to be included in consultations with private school officials has been expanded; and (3) there are additional requirements for districts to document compliance with the consultation requirements.

---

Education is responsible for providing guidance to help states and districts meet IDEA and Title I-A equitable services requirements. Education has provided guidance on equitable services generally, but this guidance has not been specific to equitable services as related to private school choice programs. For example, Education issued a 2011 Question and Answer guidance document on IDEA equitable services and a 2006 Title I-A equitable services toolkit. In 2013, Education developed an IDEA and Title I-A equitable services implementation plan, and officials said they are working to provide more information to stakeholders as part of this plan. In addition, according to officials, as of May 2016, Education was also considering providing guidance related to equitable services provisions in ESSA, and it has sought input from the public.<sup>51</sup> However, Education has not clarified guidance on equitable services requirements in the context of private school choice programs, such as explaining that these programs should not affect students' eligibility for equitable services. Education officials told us that they have not had any recent inquiries or requests for guidance on these issues, and therefore, the agency has no current plans to specifically address private school choice programs in its equitable services guidance. However, in practice, officials in all of the states we visited (which comprise 50 percent of private school choice programs and two-thirds of all participating private school choice students) noted ways that providing equitable services in the context of private school choice programs was confusing or created concerns, especially as the numbers of and participation in private school choice programs increases. Education officials stated that when specific inquiries have been received on other matters, the agency has responded by providing information in the form of Q&A or a "dear colleague" letter and that one of these mechanisms may provide an opportunity to clarify the relationship between equitable services and private school choice programs. Federal internal control standards state that agencies should provide quality information to external stakeholders.<sup>52</sup> This includes providing quality information to clarify requirements and responsibilities and adapt to emerging trends. Providing such guidance would help clarify how to implement equitable services requirements in the context of growing private school choice programs.

---

<sup>51</sup>See <http://www2.ed.gov/policy/elsec/leg/essa/index.html>.

<sup>52</sup>See GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014).

---

## Conclusions

In the past decade, the number of students participating in private school choice programs has increased significantly. As more students participate in these programs—which often focus on students with disabilities and those from low-income areas—a greater proportion of districts’ IDEA and Title I-A funding may be used to provide equitable services. Further, as more private schools participate in these programs, school districts and private schools are challenged to work together and navigate a complex environment of federal, state, and district requirements related to serving some of our nation’s most vulnerable children. In addition, recent legislative changes have led Education to consider revising its guidance to address potential for confusion about new equitable services requirements under Title I-A. These circumstances provide an opportunity for Education to support those states and districts implementing private school choice programs by clarifying equitable services provisions in the context of these programs. Absent such guidance, states and districts are likely to continue to be confused about how to implement equitable services in the context of these programs and may risk incorrectly or inefficiently implementing equitable service provisions. Taking steps to develop quality information to help ensure states and districts are accurately and appropriately implementing equitable services requirements for eligible private school students, especially within the context of private school choice, is a key component of Education’s commitment to improving educational outcomes for all students.

---

## Recommendation for Executive Action

Given the growing number of private school choice programs, we recommend that the Secretary of Education incorporate information about providing equitable services in the context of private school choice programs into guidance.

---

## Agency Comments and Our Evaluation

We provided a draft of this report to Education for its review and comment. Education’s written comments are reproduced in appendix IV. Education also provided technical comments. We incorporated changes based on their comments into the report, as appropriate.

Education agreed with our recommendation to provide information about providing equitable services in the context of private school choice programs. Specifically, Education stated they would consider appropriate guidance regarding states’ and districts’ responsibilities to ensure that IDEA’s equitable services provisions are applied to students with disabilities whose parents enroll them in private schools under choice programs, and that it would include information about ESEA Title I-A

---

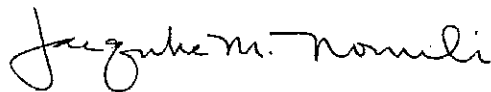
equitable services at an upcoming conference of private school representatives, as well as other future conferences, as appropriate.

In its written comments, Education also suggested that we describe equitable services as "federally funded" services rather than "federally required" services to avoid the misimpression that every eligible student is required to receive services. We agree with this suggestion and have changed the report language accordingly. Education also correctly noted that our report's discussion of equitable services for students with disabilities relates to students who are eligible for IDEA services, as opposed to students identified as having disabilities under Section 504 of the Rehabilitation Act of 1973 who are not IDEA-eligible. We added language to the report to clarify this distinction.

---

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to interested congressional committees and to the Department of Education. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (617) 788-0580 or [nowickij@gao.gov](mailto:nowickij@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in Appendix V.



Jacqueline M. Nowicki, Director  
Education, Workforce and Income Security Issues

---

# Appendix I: Objectives, Scope, and Methodology

---

The objectives of this study were to examine: (1) the characteristics of private school choice programs and the students who participate in them; (2) the requirements private school choice programs have for participating private schools; and (3) how select public school districts work with private schools to provide equitable services in the context of private school choice programs and the extent to which the U.S. Department of Education (Education) provides related guidance.

We used a variety of methods to examine all three objectives. We reviewed relevant federal laws and regulations and federal internal controls standards, including relevant requirements related to federally funded equitable services. We also conducted web-based surveys of the 20 voucher programs operating in fall 2015 and the five Education Savings Account (ESA) programs authorized in fall 2015 (see below for more information about these surveys). In addition, we conducted site visits to four states that administer a total of 10 private school choice programs. In each of these states we interviewed officials from state program administration offices; state offices responsible for implementing the equitable services requirements of the Individuals with Disabilities Education Act (IDEA) and Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA); officials from 3 private schools, and officials in 2 public school districts (see below for more information about these case study interviews, including our selection criteria). Lastly, we reviewed documents and conducted interviews with Education officials and a wide range of stakeholders, including private school choice researchers, as well as proponents and opponents of school choice. We provided relevant portions of the draft to state officials in our site visit states for review and technical comment, and we incorporated their comments as appropriate.

We conducted this performance audit from June 2015 to August 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

---

## Surveys of Voucher and ESA programs

We developed and administered one survey for all 20 voucher programs operating in fall 2015 and another survey for all five ESAs authorized in fall 2015. The ESA survey included two programs that were operating during that year and three programs that were authorized but not

operating. We achieved a 100-percent response rate for both surveys. Both the voucher and ESA surveys asked questions about program operations and requirements; the voucher survey also collected more detailed information about student and private school characteristics.

The surveys were administered from December 2015 to March 2016 using self-administered, electronic questionnaires that were posted on the Internet. We sent the survey to the state officials responsible for administering each voucher or ESA program and requested that this person consult with other officials, if needed, to provide an official state response. We reviewed state responses and followed up with select states for additional clarification and obtained corrected information, as appropriate, for our final survey analysis.

The quality of survey data can be affected by nonsampling error. Nonsampling error includes variations in how respondents interpret questions, respondents' willingness to offer accurate responses, and data collection and processing errors. We included steps in developing the surveys—and while collecting, editing, and analyzing survey data—to minimize such nonsampling error. In developing the web-based surveys, we pretested draft versions of the voucher survey with state officials in two states and draft versions of the ESA survey with state officials in one state to check the clarity of the questions and the flow and layout of the survey. We also obtained comments on both surveys from a school choice researcher. Based on the pretests, we made revisions to the surveys, as appropriate. Further, using web-based surveys helped limit data collection errors. By allowing state officials to enter their responses directly into an electronic instrument, this automatically created a record for each state official in a data file and eliminated the errors associated with a manual data entry process. In addition, the program used to analyze the survey data was independently verified to ensure the accuracy of this work.

---

## Site Visit Programs

To obtain more detailed information about how voucher and ESA programs are designed and administered, we visited 10 private school choice programs in four states from November 2015 through March 2016 and reviewed related documents. This included a non-generalizable sample of nine voucher programs located in Indiana, Ohio, and Wisconsin as well as one ESA program located in Arizona. We selected programs that collectively served approximately two-thirds of voucher and ESA students in school year 2014-15 and varied in terms of eligibility criteria and years in operation. We also interviewed a non-generalizable sample



---

**Appendix I: Objectives, Scope, and  
Methodology**

---

of 12 private schools and eight public school districts across these four states, which also allowed us to gather information on how private school choice programs and federally funded equitable services are implemented. This included three private schools and two public school districts from each state. We selected private schools that collectively represented a diversity of characteristics in terms of size, grade level, religious or secular affiliation, and whether they were specifically designed to serve students with disabilities. We selected public school districts that represented a range of enrollment sizes and included those located in the same place as district-specific voucher programs

# Appendix II: Private School Choice Programs' Use of Disability Status and Family Income to Determine Student Eligibility, as of School Year 2014-15

**Table 8: School Voucher Programs' Use of Disability Status and Family Income to Determine Student Eligibility, as of School Year 2014-15**

| State   | School Voucher Program   | Family income | Disability Status |
|---|--|---------------|-------------------|
| DC  | Opportunity Scholarship Program  | ✓             | —                 |
| FL  | McKay Scholarship Program for Students with Disabilities                 | —             | ✓                 |
| GA  | Special Needs Scholarship Program  | —             | ✓                 |
| IN  | Choice Scholarship Program <sup>a</sup>                                  | ✓             | ✓                 |
|   | Louisiana Scholarship Program  | ✓             | —                 |
| LA  | School Choice Program for Certain Students with Exceptionalities         | —             | ✓                 |
|   | Dyslexia Therapy Scholarship Program                                     | —             | ✓                 |
| MS  | Nate Rogers Scholarship for Students with Disabilities Program           | —             | ✓                 |
|   | Opportunity Scholarship Program  | ✓             | —                 |
| NC  | Disabilities Grant Program   | —             | ✓                 |
|   | Autism Scholarship Program   | —             | ✓                 |
|   | Cleveland Scholarship Program  | ✓             | —                 |
|   | Educational Choice (EdChoice) Scholarship Program <sup>b</sup>           | —             | —                 |
|   | Educational Choice (EdChoice) Scholarship Program Expansion <sup>b</sup> | ✓             | —                 |
| OH  | Jon Peterson Special Needs Scholarship Program                           | —             | ✓                 |
| OK  | Lindsey Nicole Henry Scholarship Program for Children with Disabilities  | —             | ✓                 |
| UT  | Carson Smith Special Needs Scholarship Program                           | —             | ✓                 |
|   | Milwaukee Parental Choice Program  | ✓             | —                 |
|   | Racine Parental Choice Program   | ✓             | —                 |
| WI  | Wisconsin Parental Choice Program  | ✓             | —                 |
| <b>Total number of voucher programs that consider the criterion</b> |  | <b>9</b>      | <b>11</b>         |
| <b>Percentage of total voucher students represented</b>             |  | <b>55.8 %</b> | <b>50.7 %</b>     |

Legend:

✓ = Programs that responded in our survey that either: "students must always meet this criterion to be eligible" or "this criterion is one of several ways a student may be eligible."  
 — = Programs that responded in our survey that "this criterion is never a factor for determining eligibility."

Source: GAO analysis of voucher program survey data. | GAO-16-712

<sup>a</sup>All students in Indiana's Choice Program must meet income requirements, but after doing so there are several eligibility categories students may fall into that would qualify them to receive a voucher, including having a recognized disability (i.e., a student requires special education or related services).

<sup>b</sup>Ohio considers EdChoice and EdChoice Expansion to be one program. EdChoice is focused on students in low-performing schools. EdChoice Expansion is focused on low-income students. We are considering them to be two programs because they have different eligibility criteria and Ohio provided us with separate survey responses because the data could not be aggregated.

Appendix II: Private School Choice Programs'  
Use of Disability Status and Family Income to  
Determine Student Eligibility, as of School  
Year 2014-15


**Table 9: Education Savings Account (ESA) Programs' Use of Disability Status and Family Income to Determine Student Eligibility, as of School Year 2014-15**

| State  | ESA Program                              | Family income   | Disability status |
|--|--|---|-------------------|
| AZ   | Empowerment Scholarship Account Program  | —   | ✓                 |
| FL   | Gardiner Scholarship Program             | —   | ✓                 |
| MS   | Education Scholarship Account Program    | —   | ✓                 |
| NV   | Education Savings Accounts Program       | Open to all students who have attended public school for at least 100 days <sup>a</sup> |                   |
| TN   | Individualized Education Account Program | —   | ✓                 |
| <b>Total number of ESA programs that consider the criterion:</b> |  | <b>0</b>  | <b>4</b>          |

Legend:

✓ = Programs that responded in our survey that either: "students must always meet this criterion to be eligible" or "this criterion is one of several ways a student may be eligible."

— = Programs that responded in our survey that "this criterion is never a factor for determining eligibility."

 = Programs in gray rows were not operating during some or all of 2015.

Source: GAO analysis of ESA program survey data. | GAO-16-712

<sup>a</sup>Nevada's program requirements state that "Students between the ages of 5 to 18 years old are eligible to apply for Nevada's ESA as long as they are Nevada residents and have attended a Nevada public school for 100 days immediately prior to applying."

# Appendix III: Private Schools Participating in Voucher Programs

**Table 10: Number of Private Schools That Enrolled One or More Voucher Students and Average Number of Voucher Students per Private School during School Year (SY) 2014-15, by Voucher Program**

| State | Program   | Schools that enrolled one or more voucher students in SY 2014-15 | Average students per school in SY 2014-15 |
|-------|---|--|---|
| DC    | Opportunity Scholarship Program   | 48   | 30  |
| FL    | McKay Scholarship Program for Students with Disabilities                | 1301   | 17  |
| GA    | Special Needs Scholarship Program                                       | 220  | 17  |
| IN    | Choice Scholarship Program  | 314  | 93  |
| LA    | Louisiana Scholarship Program   | 131  | 56  |
|       | School Choice Program for Certain Students with Exceptionalities        | 20   | 15  |
|       | Dyslexia Therapy Scholarship Program                                    | 3  | 39  |
| MS    | Nate Rogers Scholarship for Students with Disabilities Program          | 1  | <10                                       |
| NC    | Opportunity Scholarship Program   | 224  | <10                                       |
|       | Disabilities Grant Program  | 168  | —   |
|       | Autism Scholarship Program  | 240  | 106                                       |
|       | Cleveland Scholarship Program   | 34   | 588                                       |
|       | Educational Choice (EdChoice) Scholarship Program <sup>a</sup>          | 299  | 185                                       |
|       | Educational Choice (EdChoice) Scholarship Program Expansion             | 374  | 27  |
| OH    | Jon Peterson Special needs Scholarship Program                          | 239  | 94  |
| OK    | Lindsey Nicole Henry Scholarship Program for Children with Disabilities | 43   | —   |
| UT    | Carson Smith Special Needs Scholarship Program                          | 43   | —   |
| WI    | Milwaukee Parental Choice Program                                       | 112  | 238                                       |
|       | Racine Parental Choice Program  | 15   | 116                                       |
|       | Wisconsin Parental Choice Program                                       | 31   | 33  |

Source: GAO survey of voucher programs | GAO-16-712

Note: The number of voucher schools participating per state and the average number of voucher students per state cannot be determined for states with multiple programs because schools may participate in more than one program.

<sup>a</sup>Ohio considers EdChoice and EdChoice Expansion to be one program. EdChoice is focused on students in low-performing schools. EdChoice Expansion is focused on low-income students. We are considering them to be two programs because they have different eligibility criteria and Ohio provided us with separate survey responses because the data could not be aggregated.

# Appendix IV: Comments from the Department of Education



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

WASHINGTON, D.C. 20202

THE ASSISTANT SECRETARY

AUG 1 2016

Ms. Jacqueline M. Nowicki  
Director, Education, Workforce, and Income Security  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Nowicki:

Thank you for providing the U.S. Department of Education (Department) with the opportunity to review and comment on the U.S. Government Accountability Office's (GAO's) draft report entitled, "School Choice: Private School Choice Programs are Growing and Can Complicate Providing Certain Federally Required Services to Eligible Students" (GAO-16-712). This performance audit was undertaken in response to a Congressional request to study State voucher and education savings account (ESA) programs and Federally funded services for private school students. The review included multiple methods of collecting information and data, including a document review, a review of 20 voucher programs and five ESA programs operating in fall 2015, interviews with Department staff across multiple offices, and interviews with officials in select State educational agencies (SEAs), local educational agencies (LEAs), and private schools. This letter is in response to the opportunity to review and comment on the draft report. We appreciate the information in the report, and discuss the recommendation below.

**GAO's recommendation** – *Given the growing number of private school choice programs, we recommend that the Secretary of Education incorporate information about providing equitable services in the context of private school choice programs into guidance.*

As the Department noted in conversations with GAO regarding the eligibility for services under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) and Part B of the Individuals with Disabilities Education Act (IDEA), the reason for a student's parental placement in a private school does not affect the student's eligibility for equitable services under these programs. Whether a student is enrolled by his or her parents in a private school under a State voucher or ESA program, or for some other reason, has no impact on the Federal program requirements mentioned above, that an LEA provide equitable services to eligible students enrolled by their parents in private schools. The Department has provided considerable guidance and technical assistance on the equitable services provisions under Title I, Part A and IDEA to SEAs, LEAs, private school officials, and parents of children with disabilities over the years. However, the recent

[www.ed.gov](http://www.ed.gov)

400 MARYLAND AVE., SW, WASHINGTON, DC 20202

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

passage of the reauthorization of the ESEA, the Every Student Succeeds Act (ESSA), includes some changes related to the equitable services requirements under Title I, Part A of the ESEA and other programs.

With respect to the ESSA, we note that over the past seven months, the Department has held two public meetings and over 200 meetings with stakeholders across the country to gather input from all types of constituencies to help inform our development of regulations and guidance and our prioritization of their development and release. We published a Federal Register notice in December 2015, asking for input in general and also asked for topic areas of the ESSA that need guidance from the Department to aid implementation. The Department also held an annual meeting with private school representatives from around the country, including from States that have private school voucher or private school choice laws, just before the ESSA was enacted. The recommendations we have received thus far have not focused on the type of guidance GAO is recommending. But we appreciate the input provided in the GAO draft report, and we will provide guidance on this and related topics at an upcoming conference of private school representatives and other appropriate future conferences. As part of its development of guidance to help in the implementation of the ESSA, the Department will continue its outreach efforts to determine the need for further guidance for ESSA.

While the ESSA did not amend the equitable services provisions in IDEA section 612(a)(10)(A), the Department's Office of Special Education and Rehabilitative Services will consider guidance about the responsibilities of SEAs and LEAs to ensure that IDEA's equitable services provisions are applied to students with disabilities enrolled by their parents in private schools under State voucher and ESA programs.

In addition, we encourage GAO to change the title of its report and similar references throughout (see, e.g., pp. 3, 5) from "Federally required" to "Federally funded." The phrase "Federally required" implies that under Title I, Part A and IDEA Part B, every eligible student is required to receive services, which is incorrect. For example, while LEAs are responsible under both Title I, Part A and IDEA for providing equitable services to their populations of eligible private school students as a group, they are not required to provide such services to all eligible private school students. The title of the report may also be misleading as State voucher and ESA programs do not, by themselves, cause complications in the provision of Federally funded services.

Finally, we note that, throughout this report, the discussion of students with disabilities participating in private schools through State voucher or ESA programs appears to have been confined to the IDEA context and students with individualized education programs or students identified as children with disabilities after enrollment in the voucher or ESA program through IDEA's child find and evaluation procedures. (Note that under IDEA, students with disabilities enrolled in private schools by their parents under voucher and ESA programs who have been designated to receive equitable services have services plans that describe the specific special education and related services that the LEA will provide to the child in light of the services that the LEA makes available to parentally placed children with disabilities.) However, additional students are identified as having

---

**Appendix IV: Comments from the Department  
of Education**

---

disabilities under Section 504 of the Rehabilitation Act of 1973, but who are not IDEA-eligible students, and these students are commonly referred to as "504-only students." There are no Section 504 requirements for LEAs to provide equitable services to Section 504 students in connection with their parental placement at a private school.

Thank you for considering our comments. We are also submitting recommendations for "technical changes" to the draft report that are enclosed. Should you have additional questions or need additional information, we remain available to assist you. We look forward to receiving the final report.

Sincerely,



Ann Whalen  
Senior Advisor to the Secretary  
Delegated the Duties of Assistant Secretary  
for Elementary and Secondary Education

Enclosure

---

# Appendix V: GAO Contact and Staff Acknowledgments

---

## GAO Contacts

Jacqueline M. Nowicki, (617) 788-0580, [nowickij@gao.gov](mailto:nowickij@gao.gov)

---

## Staff Acknowledgments

In addition to the contact named above, Nagla'a El-Hodiri (Assistant Director); Jamila Jones Kennedy and Barbara Steel-Lowney (Analysts in Charge), Julie DeVault, Alison Gerry Grantham, and Jonathan Munetz made key contributions to this report. Also contributing to this report were: Susan Aschoff, James Bennett, Deborah K. Bland, Sarah C. Cornetto, Ashley L. McCall, Sheila McCoy, Jean L. McSween, Michelle A. Sager, S. Andrew Stavisky, Christine C. San, Linda L. Siegel, and Amber Yancey-Carroll.



---

## GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

---

## Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (<http://www.gao.gov>). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to <http://www.gao.gov> and select "E-mail Updates."

---

## Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

---

## Connect with GAO

Connect with GAO on Facebook, Flickr, Twitter, and YouTube. Subscribe to our RSS Feeds or E-mail Updates. Listen to our Podcasts. Visit GAO on the web at [www.gao.gov](http://www.gao.gov).

---

## To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Website: <http://www.gao.gov/fraudnet/fraudnet.htm>

E-mail: [fraudnet@gao.gov](mailto:fraudnet@gao.gov)

Automated answering system: (800) 424-5454 or (202) 512-7470

---

## Congressional Relations

Katherine Siggerud, Managing Director, [siggerudk@gao.gov](mailto:siggerudk@gao.gov), (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

---

## Public Affairs

Chuck Young, Managing Director, [youngc1@gao.gov](mailto:youngc1@gao.gov), (202) 512-4800, U.S. Government Accountability Office, 441 G Street NW, Room 7149, Washington, DC 20548

---

## Strategic Planning and External Liaison

James-Christian Blockwood, Managing Director, [spel@gao.gov](mailto:spel@gao.gov), (202) 512-4707, U.S. Government Accountability Office, 441 G Street NW, Room 7814, Washington, DC 20548



# IDEA: Equitable Services Set-Aside

## What is meant by “Equitable Services Set-Aside”?

Under the Individuals with Disabilities Education Act (IDEA), Local Education Agencies (LEAs) are required to expend a portion of their IDEA Part B allocations on special education instruction and related services to students with disabilities (as determined by an LEA IEP team) who are placed in private schools by their parents. This set-aside requirement is also referred to as IDEA’s “Proportionate Share.”

The IDEA regulations stipulate the calculation that must be used by LEAs to determine the amount of IDEA Part B funding that must be expended on special education services to parentally placed private school students with disabilities. There are two required set-aside amounts for parentally placed private school students – one from the LEA’s flow-through allocation and one from the preschool allocation.

This calculation applies *only* to students who are placed in private schools by their parents. This set-aside is not for students who are placed in private schools by the LEA or other public agencies.

## Private School Location and the LEA Responsible

Under 34 CFR § 300.133(b) and (c), LEAs are responsible for calculating and expending a proportionate share of their flow-through and preschool allocations on parentally placed private school students who are eligible for special education services.

The responsibility for implementing the requirements for parentally placed private school students with disabilities falls upon the LEA where the student’s private school is located.

### EXAMPLE:

Student A resides in the Sparta School District.

Student A attends a private school located in the Tomah School District.

*Which district is responsible for this parentally placed private school student?*

It is the responsibility of the **Tomah School District** to count Student A in their calculation of the amount that must be set-aside and expended on parentally placed private school students.

## Equitable Services Set-Aside Calculation – Flow-through

$$\begin{array}{|c|} \hline \text{LEA's} \\ \text{Flow-through Allocation} \\ \hline \end{array} \div \begin{array}{|c|} \hline \text{Total Number of Students} \\ \text{with Disabilities ages 3 to 21} \\ \hline \end{array} = \begin{array}{|c|} \hline \text{Students with Disabilities} \\ \text{per Capita Amount} \\ \hline \end{array}$$

This is the total number of students attending *both* public and private schools located in the LEA who were **ELIGIBLE** for special education (even if they do not receive any services) in the preceding school year. LEAs should use the October 1 count from the **prior year** (the regulations specify that the count take place between October 1 and December 1).

Once the average per student capita amount is established, the LEA's equitable services set-aside for flow-through can be determined. Below is the second part of the calculation.

|   |   |  |   |   |
|---|---|--|---|---|
| Students with Disabilities<br>per Capita Amount | X | # of parentally placed private<br>school students ages 3-21*<br>eligible for special education<br>attending private schools in<br>the LEA's jurisdiction | = | Flow-through amount to be<br>expended for parentally<br>placed private school students<br>with disabilities |
|---|---|--|---|---|

### Equitable Services Set-Aside Calculation – Preschool

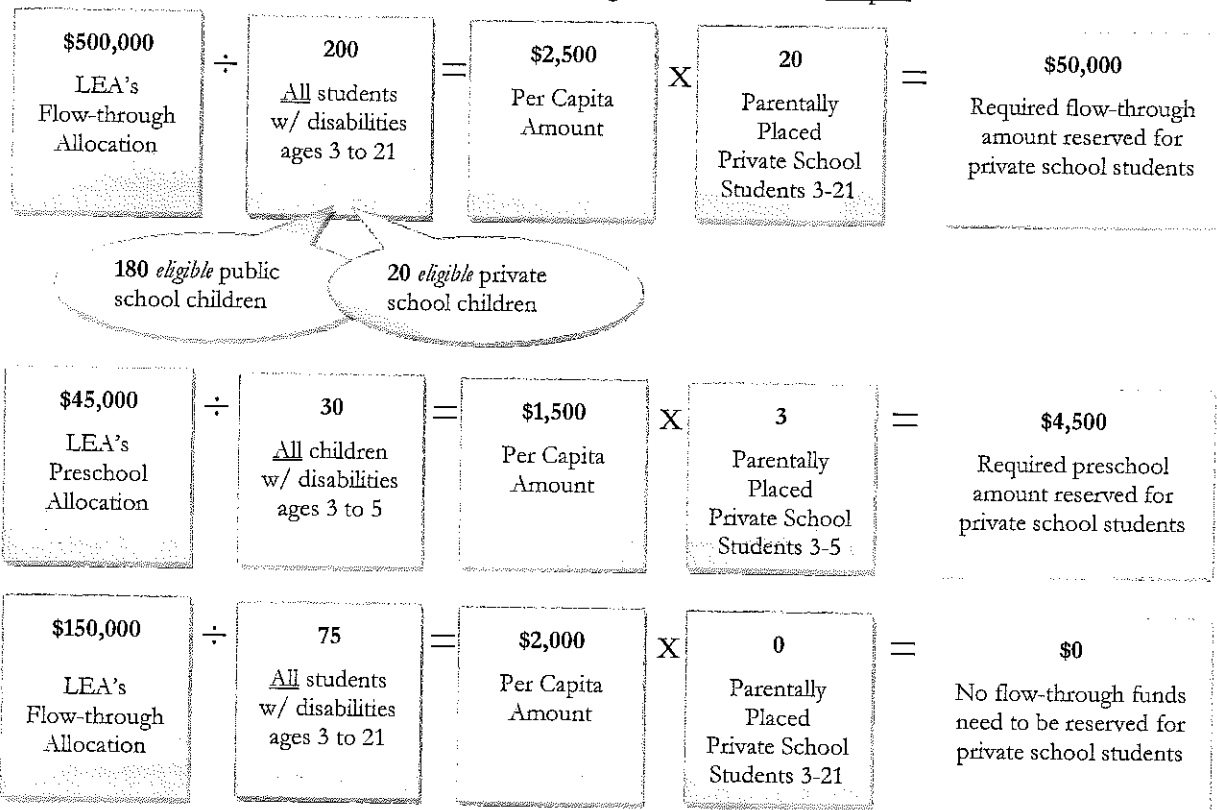
The difference between the preschool equitable services set-aside calculation and the one completed for flow-through is that only eligible children ages 3 through 5 are counted.

Children ages 3 to 5 are included in both the flow-through calculation and again in the preschool calculation. This means that parentally placed private school children ages 3 to 5 generate equitable services set-aside funds from both the flow-through and the preschool grants.

|   |   |   |   |  |
|---|---|---|---|--|
| LEA's<br>Preschool Allocation                   | ÷ | Total Number of Children<br>with Disabilities ages 3 to 5   | = | Children with Disabilities<br>per Capita Amount  |
| Children with Disabilities<br>per Capita Amount | X | # of parentally placed private<br>school students ages 3-5*<br>eligible for special education<br>attending private schools in<br>the LEA's jurisdiction | = | Preschool amount to be<br>expended for parentally<br>placed private school students<br>with disabilities |

**NOTE:** Wisconsin Statutes section 115.01(2) defines the elementary grades to include four- and five-year-old kindergarten. Therefore, IDEA requirements for parentally placed private school students with disabilities apply to students enrolled in 4K or 5K programs in private schools. The child's 4K or 5K program must be part of a sequential curriculum that progresses through the grades. The private school institution must meet the definition of a private school in Wisconsin Statutes §118.165. If a child with a disability ages 3 to 5 is enrolled by their parents in a private school 4K or 5K program, the LEA where the private school is located is responsible for child find, including evaluation, and equitable participation. If the school district determines the student will receive services, the district must develop a services plan. If the student is not parentally placed in a 4K or 5K private elementary school program, the child continues to have an individual entitlement to free appropriate public education (FAPE) from their school district of residence.

### Equitable Services Set-Aside Calculation – Flow-through and Preschool Examples



Note: The allocation amount does not include carryover from a prior year. It is the full amount of the LEA's entitlement grant, and does not change even if funds are set-aside for CEIS or Title I Schoolwide activities.

### **Allowable Equitable Service Expenditures**

Expenditures for special education instruction and related services, including transportation to and from special education services, may be considered when determining whether the LEA has expended the amount that must be set-aside. Other activities, beyond direct services, may also be considered and determined through consultation with the private schools. These activities include:

- Training to private school personnel on special education related topics
- Establishing a resource library (managed by the LEA but accessible to the private schools)

The following costs cannot be used when determining whether or not the requirements of equitable service set-aside has been met:

- Child find activities
- Evaluations
- Administrative costs, such as clerical support or special education director salaries

IDEA funds for equitable services may not be paid directly to a private school. The LEA must always control and administer the funds. However, an LEA may use IDEA funds to pay for the services of an employee of a private school to provide equitable services if the employee performs the services outside of his or her regular hours of duty and the employee performs the services under public supervision and control. Private school teachers providing equitable services do not have to meet Wisconsin licensing requirements.

An LEA may purchase equipment with IDEA funds to be used by a student in a private school – but the equipment always belongs to the LEA. The LEA must monitor that the equipment placed in a private school is used only for special education and can be removed from the private school without remodeling the private school facility. Furthermore, the LEA must remove the equipment from a private school if the equipment is no longer needed by the student or removal is necessary to avoid unauthorized use of the equipment for other than special education purposes.

IDEA funds may never be used for repairs, minor remodeling, or construction of private school facilities.

## **Equitable Services Fiscal Timeline**

If the LEA does not expend the funds set-aside in a fiscal year for equitable services to parentally placed private school students with disabilities, the LEA must obligate the remaining funds for equitable services during a carryover period of one additional year. (34 CFR §300.133(a)(3))

If the LEA does not expend the funds set-aside within the two year time frame, the LEA is permitted to use unexpended equitable services set-aside funds on other costs allowed under IDEA. The LEA must document it met all equitable services requirements (34 CFR §§300.130-300.144). The requirements include implementing a thorough child find process and obtaining written affirmations signed by representatives of participating private schools that timely and meaningful consultation occurred. If there are students with disabilities enrolled in the participating private schools, there must be services plans for students receiving services and those costs are paid using IDEA funds. (*Q and A: Questions and Answers on Serving Children with Disabilities Placed by Their Parents at Private Schools, OSEP Guidance, Question 11-5*)

However, this should be the exception. The intent of IDEA is that LEAs spend the set-aside funds on providing special education and related services to parentally placed private school students. If an LEA must reserve \$10,000 in flow-through funds for equitable services, there is a responsibility to spend those funds on direct services to students. As an example, an LEA has four private schools. There are 10 students with disabilities enrolled in those schools. Of those students, nine students need speech and language services but one student needs orientation and mobility services. If the LEA would expend all \$10,000 on speech and language, there is no requirement to provide orientation and mobility services to the 10<sup>th</sup> student. If the LEA only expends \$7,000 on speech and language, then there are funds available to provide services to the 10<sup>th</sup> student. If the LEA does not expend the set-aside even if there are unmet needs, then the LEA is in non-compliance and will forfeit the remaining set-aside funds.

In the prior example, if all 10 students needed speech and language services and the cost of providing those services ended up being \$7,000, then the LEA would carry over the remaining \$3,000 and add it to the new equitable services set-aside in the following year. The first \$3,000 in expenditures would go against the oldest money first, spending down the required set-aside for the previous year (and the LEA remains in compliance).

## **Parentally Placed Private School Students with Disabilities Attending a Choice School or a Private School with a Special Education Scholarship**

All students with disabilities, placed in private schools by their parents, are included in the equitable services calculation if they were attending the private school on October 1 – regardless of any vouchers or scholarships they may obtain. If there are 10 students with disabilities enrolled in private schools as of October 1, but two are attending the schools with special education scholarships, the LEA still uses the count of 10 to represent the number of students with disabilities attending private schools.

As for the provision of special education services, the LEA is only bound by the required set-aside amount. During the discussion between the LEA and private school officials, the LEA addresses how, where, and by whom special education and related services will be provided as well as how the services will be apportioned if funds are insufficient to serve all students.

## Frequently Asked Clarifications

*If the October 1 parentally placed private school enrollment number from last year was 0, is our required set-aside for this year really \$0.00?*

Yes.

*What if there are students with disabilities enrolled in private schools this year, but not last year?*

Because the enrollment count last year was zero, there would be no set-aside funds for this year. Even though there is no reservation amount, the LEA is still required to consult with private school officials and explain the child find process and how the set-aside amount is determined. However, because there are no set-aside funds required, no services plans need to be developed. The students enrolled in the private school this year will generate a reservation amount for next year.

*What if there were ten private school students last year and none this year? What are we supposed to do with the funds?*

The LEA is required to complete the calculation and reserve the funds. If the funds are not spent during year 1, then they are carried over into year 2 (remember, in year 2 there would be no new reserved amount because the child count number from the prior year was zero). LEAs should have consulted with the private schools regarding the child find process and if any students with disabilities are determined or enrolled during the year, the LEA should meet with the private school officials again to discuss possible services as there are funds available for equitable services.

*What about the private school students who are identified after October 1?*

An LEA's set-aside is based on the count that was taken between October 1 and December 1. If a parentally placed private school student is determined to be a student with a disability after October 1, the LEA would not adjust their set aside calculation. However, LEAs should have consulted with the private schools regarding the child find process and if any students with disabilities are determined or enrolled during the year, the LEA should meet with the private school officials again to discuss possible services if there are funds available for equitable services that are not earmarked for existing services plans.

*Are Residential Care Centers (RCC) considered private schools?*

Yes – if they meet the definition of a private school in Wisconsin, they are private schools under the equitable participation provision of IDEA. However, equitable services are provided to parentally placed private school students. So although RCCs are private schools, the student has to be placed by a parent to be included in the calculation.

*We bill all of our Speech and Language therapists to Medicaid. Do we have to use IDEA funds to provide services to private school students? We're providing the services, we just want to use local funds.*

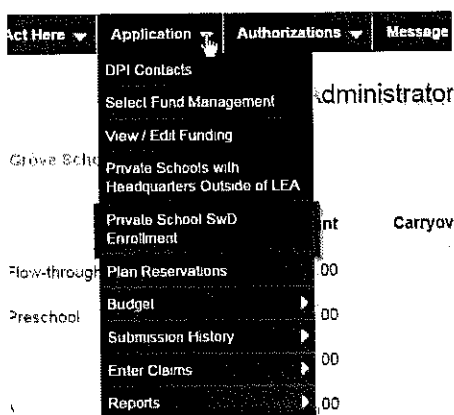
Yes. The equitable services set-aside amount under IDEA must be used. To use local funds instead of IDEA funds would be considered supplanting.

## Set-Aside Calculation and Budgeting Equitable Services through WISEgrants

Wisconsin LEAs use WISEgrants to submit IDEA entitlement and discretionary grants. Through the web-based application process, the LEA submits private school student enrollment numbers and the software calculates the correct amount the LEA must reserve for equitable services for any given fiscal year. Within the flow-through and preschool budgets, LEAs can budget specific expenditures earmarked for private school students.

In addition, LEAs are required to submit to DPI the number of parentally placed private school students evaluated, the number of parentally placed private school students determined to be students with disabilities under Part B of IDEA, and the number of students who are provided equitable services (34 CFR §300.132(c)). This data is collected through the equitable services set-aside process within WISEgrants.

### WISEgrants



Within the flow-through or preschool application menu, LEAs with private schools will see a menu option of "Private School SwD Enrollment." If there is no such menu choice, then DPI does not have a private school on record within the LEA's jurisdiction and the user can continue on to the flow-through or preschool budget.

For all other LEAs, the private school enrollment must be entered before the flow-through or preschool budgets "open" for data entry.

In rare situations, there is a private school located within the LEA's jurisdiction that does not show up on the LEA's private school list because the private school's "headquarters" are located in another LEA's boundaries. In these situations, the LEA would select "Private Schools with Headquarters Outside of the LEA" menu choice and follow the instructions in that section.

### WISEgrants Application Process – Step 1 – Enter the Enrollment Count Date

Enrollment Count Date

Select the date on which the enrollment count was performed. Equitable Services Set-Aside amounts are based on a count of students taken during the prior year. After timely and meaningful consultation with representatives of parentally placed private school students with disabilities, the LEA must determine the number of parentally placed private school students with disabilities attending private schools located in the LEA. This count must have been conducted between October 1 and December 1, 2015.

Count Date Performed

10/1/2015

Save

The instructions for this section will always inform the user which count date and year to use. In this screenshot, the user is in the 2016-17 fiscal year. The enrollment count must be from between October 1 and December 1 of 2015, which is the year before. The equitable services set-aside is always based on the prior year's October 1 child count and never the current year.

## WISEgrants Application Process – Step 2 – Enter the Public School Enrollment Numbers

Total Student with Disabilities Enrolled in PUBLIC Schools Enrollment Data

AGES 3 to 5 - Enter the total number of children eligible for special education, enrolled in the LEA's public schools, ages 3 to 5 as of October 1, 2015

Number of Students with Disabilities ages 3 to 5, enrolled in the public schools as of October 1

42

AGES 6 to 21 - Enter the total number of children eligible for special education, enrolled in the LEA's public schools, ages 6 to 21 as of October 1, 2015

Number of Students with Disabilities ages 6 to 21, enrolled in the public schools as of October 1

243

Save

This is where the public school enrollment numbers, from the prior fiscal year's October 1 child count, are entered. The numbers are split between 3 to 5 year olds and 6 to 21 year olds.

The words "public schools" are highlighted because more than one LEA has had issues with this section and entered private school enrollment counts instead – which created a very confusing set-aside amount. If, when the reservations section is seen and the minimum set-aside appears to be the LEA's entire allocation, double check that public school numbers and not private school enrollment numbers were saved in this section.

## WISEgrants Application Process – Step 3 – Enter the Private School Enrollment Numbers

| Private School Code | Private School Name           | Number of Students Re/Evaluated between July 1 and June 30 | Ages 3 to 5 - October 1 Count of Students with Disabilities Enrolled in the Private School | Ages 6 to 21 - October 1 Count of Students with Disabilities Enrolled in the Private School | Number of Students with Services Plans between July 1 and June 30 |
|---------------------|-------------------------------|--|--|---|---|
| 1460                | Immaculate Hrt of Mary Gr Sch | 2  | 1  | 3   | 3   |
| 1666                | Charis Classical Academy      | 1  | 0  | 1   | 1   |
| 1720                | Three Angels Christian School | 1  | 1  | 2   | 0   |
|                     |                               | Total : 4  | Total : 2  | Total : 6   | Total : 4   |

The grid will display the private schools located within the LEA's jurisdiction. There are four columns in which data must be saved. The LEA is allowed to save all zeroes if there are no students with disabilities enrolled in the private schools.

*Number of Students Re/Evaluated between July 1 and June 30:* Enter all private school student special education evaluations, both initial and re-evaluations, performed between July 1 and June 30 of the prior year. If the current fiscal year is 2016-17, the number would reflect evaluations completed between July 1, 2015 and June 30, 2016.

*Ages 3 to 5 – October 1 Count of Students with Disabilities Enrolled in the Private School:* Enter the number of students, ages 3 to 5, with disabilities parentally placed into private schools as of October 1 of the prior year. If the current fiscal year is 2016-17, the number would reflect the October 1, 2015, child count. This number is used to determine the set-aside amount for preschool and flow-through.



**Ages 6 to 21 – October 1 Count of Students with Disabilities Enrolled in the Private School:** Enter the number of students, ages 6 to 21, with disabilities parentally placed into private schools as of October 1 of the prior year. If the current fiscal year is 2016-17, the number would reflect the October 1, 2015, child count. This number is used to determine the set-aside amount for flow-through.

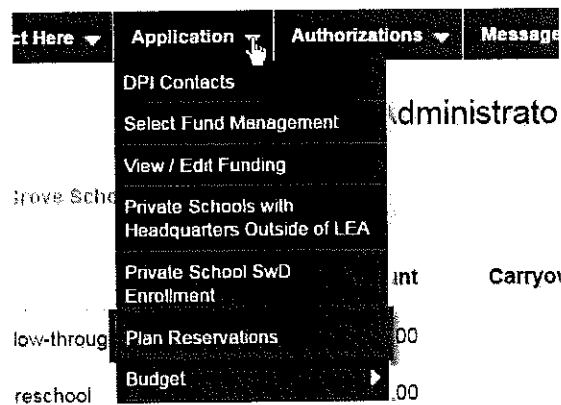
**Number of Students with Services Plan between July 1 and June 30:** Enter the number of students with disabilities, ages 3 to 21, parentally placed into private schools who received special education services between July 1 and June 30 of the prior year. If the current fiscal year is 2016-17, the number would reflect students with services plans in place between July 1, 2015 and June 30, 2016.

Once the enrollment counts are entered and saved, the LEA can set-aside the required reservation amounts. This step is completed through the Plan Reservations section of the application, which is shown as a menu choice in the graphic to the right.

All LEAs can see the Plan Reservations section as this is also where CEIS and Title I Schoolwide set-aside funds are reserved.

Even if the LEA entered all “zeroes” for private school enrollment numbers, the equitable services portion of the Plan Reservations page must be completed. LEAs who report enrollment numbers of zero must provide an additional assurance (through the software) that the enrollment data is accurate.

## WISEgrants



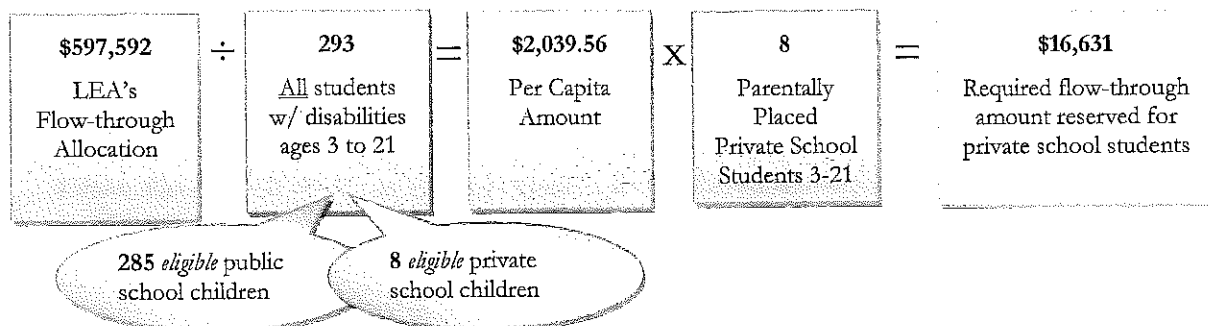
### WISEgrants Application Process – Step 4 – Enter the Required Reservations Amount

#### Equitable Services

| Calculation                             | Minimum     | Flow-Through Amount                      | Preschool Amount                      |
|---|-------------|--|---------------------------------------|
| $\$597,592.00 / 293 = \$2,039.56 * 8 =$ | \$16,316.51 | <input type="text" value="\$16,316.51"/> |                                       |
| $\$13,578.00 / 44 = \$308.59 * 2 =$     | \$617.18    |  | <input type="text" value="\$617.18"/> |

The top section of the reservations page is dedicated towards the Equitable Services set-aside. The minimum amount displayed must be entered by the user in the “Flow-Through Amount” and “Preschool Amount” fields and saved.

The equitable services set-aside calculation, as required by IDEA, is displayed for both grants.



The minimum equitable services set-aside amount for each grant must be reserved before the flow-through or preschool budget can be entered.

If the LEA has unspent set-aside from the prior year, it should be included in the reserved amount in this section (the amounts saved can be *greater* than the minimum required).

If the LEA entered zeros for enrollment of parentally placed private school students for all of its private schools, the reservation amount generated is \$0. To ensure this information is accurate, the LEA must provide an assurance on the reservations page, which looks like this:

#### Equitable Services

| Calculation                             | Minimum | Flow-Through Amount                 | Preschool Amount                    |
|---|---------|-------------------------------------|-------------------------------------|
| $\$306,837.00 / 204 = \$1,504.10 * 0 =$ | \$0.00  | <input type="text" value="\$0.00"/> |                                     |
| $\$9,214.00 / 24 = \$383.92 * 0 =$      | \$0.00  |                                     | <input type="text" value="\$0.00"/> |

Zero enrollment has been entered for all private schools in Barron Area School District. Please verify that this is correct by selecting the following check box. If this is not correct please return to the Private School SwD Enrollment screen to adjust the data accordingly.

Verified by Katarina House on 6/9/2016 at 2:13 PM

**A submission of zeroes for enrollment generates a \$0 setaside. LEAs must provide an additional assurance that there truly are no students with disabilities enrolled in any of the private schools in the LEA's jurisdiction.**

Save

### WISEgrants Application Process – Step 5 – Budget for Required Equitable Services Set-Aside Amount

Once the reservation amounts have been saved, the LEA can enter data into their flow-through and preschool budgets. The LEA will need to budget for expenditures that will spend down their required set-aside amount. This is done by choosing "Private School" from the Program Type field on budget item entries.

**Personnel**

**The 'Program Type' identifies the cost as one that budgets against the equitable services requirement**

|                                       |                                      |
|---------------------------------------|--------------------------------------|
| Program Type: Private School          | Area: No Description Beyond Position |
| Position: Speech/Language Pathologist | Object: 200 - Employee Benefits      |
| Position Activity: Standard (Default) | Benefits: \$13,241.00                |
| Function: 156800 - Speech/Language    |                                      |
| Salary: \$26,000.00                   |                                      |
| General Ledger Account:               |                                      |
| Staff Name or Detailed Description    |                                      |

Cancel Save Save and Repeat Combo

**Note:** A reservation made under preschool can be budgeted and expended out of the flow-through grant to meet the requirement. If choosing to do this, the LEA must be certain to budget the minimum required preschool amount, as determined on the reservations page, in the flow-through budget.

**WISEgrants** Wisconsin Information System for Education **Federal Grants Portal**

EA - Flow-through

Home Admin Menu Change Act Here Application Authorizations Omni Message Board

IDEA - Flow-through Budget - All Schools

(QA Server) 0980 - Cash

Personnel

Submission Personnel Purchased Services Non-Capital Objects Capital Objects Other Objects Indirect View All

Personnel

Program Type: Private School

Position: Speech/Language Pathologist

Position Activity: Standard/Default

Function: 152600 - Speech/Language

Salary: \$1,000.00

General Ledger Account:

Detailed Description:

Area: No Description Beyond Position

Object: 220 - Employee Benefits

Benefits:

**Funding Detail**

Grants: Flow-through

Allocation: \$150,000.00

Carryover: \$151,476.00

Total: \$301,476.00

Flow-through Available: \$289,909.00

Title I Schoolwide

Reservation: \$11,547.00

CEIS Reservation: \$0.00

**Budget Overview**

Flow-through Amount: \$289,909.00

Amount Budgeted: \$216,330.00

Amount Remaining: \$73,579.00

Total Claimed: \$0.00

Total Unclaimed: \$0.00

**Budget Status**

Current Status: Unlocked

Amendment #: 2

Last Submitted: 01/23/2016

Last Approved / Returned: 01/23/2016

**Budget Section Summary**

**Equitable Services Summary**

Amount reserved for Equitable Services: \$16,555.00

Amount budgeted for private school services: \$1,000.00

Amount still required to be budgeted: \$17,555.00

The budget sidebar will track the amounts budgeted for the Program Type "Private School"

## Accounting and Supporting Documentation for Equitable Services Expenditures

Expenditures for equitable services are coded to Fund 27 using the appropriate special education function. The project code will either be 341 for flow-through or 347 for preschool.

Staff who provide equitable services are funded by a federal grant and thus appropriate time and effort records must be kept in accordance with the Uniform Grant Guidance (2 CFR Part 200). The type of time and effort supporting documentation kept will depend on the staff person's normal cost objective.

If the individual, outside of providing the equitable services to parentally placed private school students, is considered to have a single cost objective – such as a speech and language therapist – then this person's job description would most likely suffice as adequate time and effort documentation.

However, please take note that during monitoring of this requirement, the LEA will be required to provide supporting documentation of expenditures, so there is still a need to document the staff time spent providing equitable services in relation to non-equitable services work with students enrolled in public school.

## End of Year Required Reporting through WISEgrants

If there is an equitable services reservation amount for flow-through and no funds budgeted for private school services by June 1 at the end of the fiscal year, the LEA will be required to provide information on the circumstances that led to no funds being budgeted.

This will be completed through WISEgrants. LEAs will not be able to submit budget amendments or claims until either the questions have been answered and reviewed or items have been budgeted for private school services.

This requirement only applies to LEAs that had a proportionate share reserved on the Plan Reservations page of the application but as of June 1 at the end of the fiscal year had not yet budgeted any dollars for private school services. The flow-through budget software tracks the expenditures dedicated for equitable services when the user chooses "Private Schools" from the program type in each budget entry.

### Submission

[Submission](#) [Personnel](#) [Purchased Services](#) [Non-Capital Objects](#) [Capital Objects](#) [Insurance](#) [Other Objects](#) [Indirect](#) [IDEA Equitable Services Mandatory Reporting](#)  
[View All Sections](#)

In order to submit the IDEA - Flow-through (Flow-through) budget, complete the tasks identified here:

A required amount of \$12,590.31 was reserved from flow-through to expend on Equitable Services for Parentally Placed Private School Students with Disabilities. As of June 1, 2017, an amount of \$0 has been budgeted in the flow-through application for private school expenditures for the 2016-2017 fiscal year. Unless items are budgeted for parentally placed private school students with disabilities in the current budget and approved, the questions in the budget section "IDEA Equitable Services Mandatory Reporting" must be answered and submitted before any further claims can be submitted.

This is the budget validation that will appear on the flow-through budget submission page. There are two ways to remove the validation – the LEA can add private school expenditures that were left off of the budget and have the budget amendment approved; or answer the "IDEA Equitable Services Mandatory Reporting" questions. The new reporting section hyperlink has been highlighted in the graphic above.

If the LEA does not have any items to budget for private school expenditures, the required questions must be completed. Clicking on the hyperlink menu item, the user is taken to the required reporting page.

#### Question 1

The equitable services reservation amount is based upon the number of students with disabilities parentally placed in the private schools as of October 1, 2015. During 2016-2017, were there any parentally placed private school students with disabilities attending any of the LEA's private schools?

- ❖ *No, there were no parentally placed private school students with disabilities attending any of our private schools during the 2016-2017 school year, thus there were no students in which to provide services.*
- ❖ *Yes, there were parentally placed private school students with disabilities attending private schools during the 2016-2017 school year.*

**Analysis:** The set-aside for the current year was generated from the student count in the prior year. If two students were enrolled in the private school last year, but none this year, a proportionate share was still required in the current year. If this was the case, the user would answer that "No, there were no parentally placed private school students with disabilities." Upon saving the answer, the user will be reminded that the reserved funds must be carried over into the next fiscal year and spent on any parentally placed private school students during the new year. This amount should be added to the "Plan Reservations" in the next fiscal year.

However, if the answer was "Yes, there were parentally placed private school students" then the LEA must answer additional questions regarding why if there were students, no funds were budgeted for private school services.

## Question 2

Regardless of private school participation, LEAs are required to set-aside a proportionate share of their IDEA Part B funds for parentally placed private school students based upon the number of parentally placed private school students in which an IEP team has determined a disability. Is the reason no required funds were budgeted during the 2016-2017 school year because all parentally placed private school students within the LEA's jurisdiction refused services?

- ❖ *No, there were parentally placed private school students with disabilities attending our private schools during the 2016-2017 school year who had services plans or could have had services plans.*
- ❖ *Yes, all private school representatives and families declined to participate in the consultation process.*

Analysis: If there were students who had services plans or could have had services plans, the LEA must provide the reason why equitable services funds were reserved but no funds budgeted for private school services. In general, there is no "right" answer to this question, but, it will help DPI provide technical assistance to the LEA for future compliance. For instance, it could be that equitable services were provided, but the LEA used local funds instead of IDEA funds. Or, the LEA had a practice of only providing speech and language services and the current parentally placed private school students required other special education services – which were subsequently then not provided. These are both items that would need to be corrected.

However, there are cases where the private school representatives and families do not wish to participate in equitable services. This is only applicable if all of the private schools within the LEA's jurisdiction refuse to participate. As an example, an LEA only has one private school and that private school declined to participate in the consultation process. The LEA is to document the efforts to engage in consultation, including the dates of attempts, the nature of the attempts and the results of each attempt.

Once the questions have been saved and the budget amendment submitted, DPI will review and either approve the budget amendment or return it for additional information.

